

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO
COMPANY, et al.,

Defendants.

_____ /

Miami-Dade County Courthouse
Miami, Florida
9:35 a.m.
November 12, 1998

TRIAL - VOLUME 130

The above-styled cause came on for trial
before the Honorable Robert Paul Kaye, Circuit Judge,
pursuant to notice.

APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.
SUSAN ROSENBLATT, ESQ.
On behalf of Plaintiffs

DECHERT PRICE & RHOADS
ROBERT C. HEIM, ESQ.
SEAN P. WAJERT, ESQ.
On behalf of Defendant Philip Morris

COLL DAVIDSON CARTER SMITH SALTER & BARKETT
NORMAN A. COLL, ESQ.
On behalf of Defendant Philip Morris

ZACK KOSNITZKY
STEPHEN N. ZACK, ESQ.
On behalf of Defendant Philip Morris

CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER
R. BENJAMINE REID, ESQ.
On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE
JAMES R. JOHNSON, ESQ.
RICHARD M. KIRBY, ESQ.
On behalf of Defendant R.J. Reynolds

KING & SPALDING
MICHAEL RUSS, ESQ.
RICHARD A. SCHNEIDER, ESQ.
On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY
KELLY ANNE LUTHER, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group

SHOOK HARDY & BACON
EDWARD A. MOSS, ESQ.
WILLIAM P. GERAGHTY, ESQ.
On behalf of Defendant Brown & Williamson
JAMES T. NEWSOM, ESQ.
On behalf of Defendant Lorillard

(APPEARANCES - Continued)

DEBEVOISE & PLIMPTON
ANNE COHEN, ESQ.
JOSEPH R. MOODHE, ESQ.
On behalf of Defendant The Council for Tobacco

Research

GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL
DAVID L. ROSS, ESQ.
On behalf of Defendant Lorillard

MARTINEZ & GUTIERREZ
JOSE MARTINEZ, ESQ.
On behalf of Defendant Dosal Tobacco Corp.
and Tobacco Institute

KASOWITZ BENSON TORRES & FRIEDMAN
AARON MARKS, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group

I N D E X

WITNESS	PAGE
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DEFENDANTS'	OFFERED	ADMITTED	FOR ID
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(None)

1 (Whereupon, the following proceedings were had:)

2 THE COURT: Good morning. Have a seat.

3 What's on the agenda?

4 MR. ROSENBLATT: Okay, Judge.

5 We have as a witness, and the witness is
6 here, Dr. Jesse Steinfeld, who's a former Surgeon
7 General of the United States. I don't expect that
8 Dr. Steinfeld is going to take, you know, all day or
9 nearly all day.

10 THE COURT: Okay.

11 MR. ROSENBLATT: So what my plan is,
12 yesterday we did take the video deposition of
13 Dr. William Grossman, the cardiologist from the
14 University of California. He could only be here
15 yesterday. Since, you know, court was closed, we did
16 that.

17 Now, obviously, I would want to occupy the
18 rest of the day showing his video deposition. And
19 we -- we have a cassette where all of the colloquy
has
but
20 been removed. You know, not all of the objections,
21 all of the colloquy. Not that there was that much.

22 So, the deposition is not very long. So, I
23 don't know if you want to go over that now, or I
could
24 simply hand you the deposition and, you know --

25 THE COURT: Let's put it that way. You
have

1 a transcript for me, right?

2 MR. ROSENBLATT: Yes.

3 THE COURT: Let me get the transcript.

We'll

4 put this witness on. I'll review the transcript and
5 see if there's anything we really need to talk about
6 prior to the time that you show the video.

7 MR. ROSENBLATT: Okay.

8 MR. REID: Judge, I was at the deposition,
9 and they could not get us the copy yesterday, the

court

10 reporter that Mr. Rosenblatt used. It had to be this
11 morning. I just got it ten minutes ago.

12 THE COURT: Yes.

13 MR. REID: I'll have some objections. I

made

14 some form objections.

15 THE COURT: I'll review it.

16 MR. REID: I want to take an opportunity to
17 point out my objections, and I'll do it once the
18 witness is on.

19 THE COURT: Yes.

20 MR. REID: I assume all of the objections
21 will be taken out of the tape, as well. I asked that
22 yesterday when Mr. Rosenblatt was going to have --

23 THE COURT: Sometimes yes, sometimes no.

24 Under the circumstances, the objections are still
25 there -- in other words, somebody is going to say

14246

1 objection, either form or something. I guess there
2 were no speaking objections.

3 MR. REID: There were no speaking
objections.

4 All form. Those should be removed. I asked --

5 THE COURT: It's difficult.

6 MR. REID: We tried to do it in such a way
--

7 I told the witness I'd raise my hand so he would stop
8 talking and there would be a break, because I know we
9 were trying to do this today.

10 THE COURT: What happened is you get a
really

11 good operator who would hit the sound off button.

12 MR. REID: Sure, if he's that good.

13 MR. ROSENBLATT: Here's the videographer.

14 We'll ask him if that's the case.

15 What they're concerned about is removing
the

16 objections.

17 THE VIDEOGRAPHER: Just the word
"objection."

18 THE COURT: Sometimes they'll say
objection,

19 form.

20 THE VIDEOGRAPHER: If it is between the
21 question and answer, it's not a problem.

22 THE COURT: Sometimes it is.

23 THE VIDEOGRAPHER: Sometimes there's
24 overspeaking.

25 THE COURT: I haven't had much problem with

14247

1 even leaving the objections in.

2 MR. REID: Well, Your Honor --

3 THE COURT: Assuming they were sustained,
4 then the question and the answer would be removed,
5 but --

6 MR REID: Your Honor, I tried to do it in
7 such a way we could remove them because we feel they
8 shouldn't be in there. They're distracting.

9 THE COURT: Why not? They're here when the
10 person testifies live.

11 MR. REID: I understand we have the ability
12 to cut it out. I think we can do that. If there's

one

13 or two that speak over, that's one thing. I suggest

we

14 have the operator try to do it if we can. If he

misses

15 one, we'll deal with that problem.

16 THE COURT: Let's find out how long the

tape

17 runs, if you know.

18 MR. ROSENBLATT: Two hours and three

minutes.

19 THE COURT: Let me run through the

transcript

20 and see what goes.

21 Yes, sir.

22 MR. HEIM: Your Honor, there is one issue

few
23 that we ought to take up prior to Dr. Steinfeld's
24 testimony, and we need to excuse the witness for a
25 minutes while we take up that one issue.

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would
1 THE COURT: All right. Doctor, if you

2 just step outside for a few minutes.

3 Thank you.

4 (The witness exited the courtroom.)

5 THE COURT: Yes, sir.

could
6 MR. KIRBY: Your Honor, when we called
7 Dr. Steinfeld to testify in Broin, there was a
8 discussion before his testimony about whether he

9 testify as to the contents of an alleged letter that
10 was supposedly written by the president of R.J.
11 Reynolds Tobacco Company to President Nixon.

12 THE COURT: Oh, yes.

13 MR. KIRBY: And based on that, there was
14 extensive discussion about that previously. And if
15 Your Honor wants me to go through it, I'll be happy
to.

if
16 THE COURT: Where is it in the transcript,
17 you know?

18 MR. KIRBY: Pardon me?

19 THE COURT: Where is it in the transcript?

20 MR. MOSS: For Dr. Steinfeld, not for the

21 other witness.

22 MR. HEIM: It's for the Surgeon General.

two,

23 MR. KIRBY: I didn't mean to confuse the

24 I apologize.

25 THE COURT: This is Grossman.

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1 MR. HEIM: Right.

2 THE COURT: Yes. Go ahead.

in

3 MR. KIRBY: And Dr. Steinfeld, we believe,
4 would like in this trial, as was not permitted to do

that,

5 Broin, testify as to the contents of this letter

6 of course, we don't believe ever existed.

7 THE COURT: If I recall what happened, he
8 wrote a letter --

9 MR. KIRBY: What --

10 THE COURT: He wrote a letter. Right --

What

11 MR. KIRBY: He didn't write the letter.

12 he claimed is that he saw --

13 THE COURT: Saw the letter.

by

14 MR. KIRBY: -- a letter supposedly written

15 Mr. Pepples, the then-president of R.J. Reynolds

16 Tobacco Company.

17 THE COURT: Right.

the

18 MR. KIRBY: To then President Nixon after

19 November 1972 election.

20 THE COURT: Yes.

21 MR. KIRBY: Which --

22 THE COURT: Okay. I ruled against any
23 testimony regarding the letter, as I recall.

24 MR. KIRBY: That's right. And against --

25 THE COURT: Do you intend to raise that

issue

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1 again?

2 MR. KIRBY: -- him speculating as to why he
3 was, in quotes, fired.

4 THE COURT: Do you attempt to go into that?

5 MR. ROSENBLATT: Now, just to put this in
6 context, yes, the -- what Mr. Kirby is talking about,
7 Dr. Steinfeld would have been prepared to testify he
8 saw a letter from the president of R.J. Reynolds to
9 President Nixon --

10 THE COURT: Yes.

11 MR. ROSENBLATT: -- saying, in effect, you
12 know, after he had -- after he had clobbered McGovern
13 in 1972, saying, in effect, you know, we made these

big

14 contributions, and, you know, part of the deal was

you

15 get rid of Steinfeld and you haven't got rid of him

yet

16 and that kind of thing.

17 And we still have not found the letter.
18 So, I was certainly going to, since you
have
19 not felt any compulsion to be totally consistent with
20 your rulings in Broin, I was going to revisit that
with
21 you, with the expectation that on this issue,
22 unfortunately, you would be consistent.
23 THE COURT: No. Every case is different.
24 And you can't really bank on the same rulings. As a
25 matter of fact, you can't even bank on the same
rulings

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1 on a retrial. You know, it's very difficult. Very,
2 very difficult.
3 My gut reaction is I handle a situation
that
4 comes up as it comes up in the situation that it
comes
5 up in.
6 And things may change. Even the tenor of a
7 question may change and make a difference in a
ruling.
8 So, I usually don't even worry about what I did last
9 time and I worry about what I'm doing now.
10 My thought on this is, without the letter,
I
11 don't think he should be allowed to discuss the
12 contents of the letter or anything of that nature.
He
13 may say that he was made aware of a letter;

subsequent

14 to that letter, a certain incident took place. So be
15 it. Whether they can make the connection with this
16 letter and the incident, that's a different story.

17 But I don't think I'll let him get in the
18 content or even suppose or speculate on the content.

19 MR. ROSENBLATT: Now, there are some other
20 letters which were introduced in Broin where the
21 president of Reynolds wrote to Surgeon General
22 Steinfeld's boss, Elliott Richardson, the secretary
23 Health, Education and Welfare, and those letters we
24 have.

25 THE COURT: Different story.

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1 MR. ROSENBLATT: I understand.

2 MR. MOSS: Insofar as him being able to say
3 that he was made aware of a letter --

4 THE COURT: A letter. Period.

5 MR. MOSS: I understand. But being able to
6 say that and then following it up with, and --

7 THE COURT: Not as a result of.

8 MR. MOSS: No. I understand. And then I

9 not reappointed or fired, I mean, we -- they're
10 allowing to get the same inference to the jury when
11 there is no relevance to, I was made aware of a
letter.

was

12 That's the problem.

13 THE COURT: I understand that. But, let's
14 face it, is there -- what is the prohibition of
15 somebody coming in saying, I was made aware of a
16 letter, or I became aware of a letter?

17 MR. MOSS: There would be no prohibition
18 except for the clear import of getting the -- the
19 import of that letter to the jury through the back
20 door, and that clearly is violative of -- I mean,
21 there's no need for the rule.

22 MR. KIRBY: It's just another way, Your
23 Honor, of violating the best evidence rule. And if I
24 may point out something, in his deposition,
25 Dr. Steinfeld was asked, not only in his Broin

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1 deposition, but in the recent one that was taken just
2 in July of this year, about issues that may have led
to

3 the president requesting his resignation?

4 He went through a host of things, his
5 position on TV violence and cyclamates and phosphates
6 and so forth. And the question was asked: And are
7 these the issues that lead to the president
requesting

8 your resignation.

9 And his answer was: Well, I have no idea.

10 So we not only have the problem of the best
11 evidence rule and all of the problems with that, but

12 then it's compounded by the others. Then on top of
13 that is the speculation. And then on top of that is,
14 of course, the 403 prejudice.

15 THE COURT: Let's put it this way. There's
16 been many cases that have resolved the issue of BOLO
17 report. Same concept. A police officer received a
18 BOLO. Arrived at the scene of a crime. Can't say

what

19 the BOLO said, but he can say that as a result of
20 getting a BOLO, he went some place or did something.

21 It's the same concept. He was aware of a
22 letter and then some action took place, without

making

23 reference to the letter.

24 Now, there is a great deal of similarity in
25 that sort of a situation, because one could always

say

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1 that just because of the BOLO, that you went to the
2 scene of a break-in, so obviously there was a break-
3 that kind of a thing. Those have passed muster so

in,

far.

4 MR. KIRBY: Your Honor, I think there's at
5 least two differences. One is in the example you're
6 using to explain the conduct of the officer, what

this

7 is is really two steps removed, because you take a,

"I

8 saw a letter," the content of which is not known, and

9 then the testimony later -- the content of the
10 letter -- "I saw a letter from" -- of course, you
11 understand, Your Honor --

12 THE COURT: Not from. No from.

13 MR. KIRBY: Oh, no "from" and no "to"?

14 THE COURT: No "from" and no "to."

15 MR. KIRBY: Okay. We're getting better.

16 I still don't think it's completely

17 analogous, Your Honor, because what this is --

18 THE COURT: Okay. Without the "from" and

the

19 "to," right, then the whole issue is meaningless,

isn't

20 it?

21 I mean, the whole import of this thing is

to

22 show there was some inference by the tobacco industry

23 about his tenure.

24 MR. KIRBY: It's really speculation.

25 MR. ROSENBLATT: It's not speculation at

all.

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1 Dr. Steinfeld saw the letter. He's not going to
2 comment about the contents of the letter but he
3 knows --

4 THE COURT: There's no proof of the letter

at

5 all.

6 MR. ROSENBLATT: No, but he can --

lost.

7 THE COURT: He can't. That's the thing.
8 MR. ROSENBLATT: Suppose the letter is

9 He should certainly --

10 THE COURT: That's possible.

11 MR. ROSENBLATT: "I saw a letter from,"
12 without getting into the contents. "I saw a letter
13 from.

14 THE COURT: There's no way to prove the
15 contents thereof, the proof and veracity of it. It
16 lends itself to a lot of speculation as to what was
in

17 it. It could even be self-serving statements made by
18 the witness for the purposes of explaining something.

19 MR. ROSENBLATT: You're not going to permit
20 him to explain the content of the letter.

21 THE COURT: Yes. I understand that. I
think

22 it's safer just to forget the whole business about
the

23 letter that said that he was fired or released as of
a

24 certain date, unless you can prove some connection,
and

25 you can't.

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1 MR. ROSENBLATT: Well, I think in context,
2 Your Honor, and I'm not going to blurt out anything,
3 because there are some other letters --

leave

it

4 THE COURT: Different.
5 MR. ROSENBLATT: -- which I have.
6 THE COURT: Different story. But we'll
7 that letter alone.
8 MR. ROSENBLATT: Okay. I've got to leave
9 alone because I don't have it.
10 THE COURT: Well, any reference to it.
11 MR. ROSENBLATT: Okay.
12 THE COURT: So we'll talk to him before he
13 talks to the jury.
14 MR. MOSS: We'll tell him about that.
15 THE COURT: Yes. Yes. I think in the long
16 haul, it's safer and it's a minor point overall. It
17 causes more trouble than it solves. And that's where
18 the issue is. Lord knows, we don't need troubles.
19 MR. ROSENBLATT: I just want to be sure,
20 Judge, we don't run into a technical problem, because
21 I'm told by the videographer, for example, if you
22 to say, well, I want this out and I want -- you know,
23 and make that decision whenever you make it, whenever
24 you have a chance to read the transcript -- what is
25 going to take, a couple of hours to do?

were

it

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1 THE VIDEOGRAPHER: The tape is two hours
2 long. It would take two hours to master it, plus

and

3 however long it takes to take out what you need.

4 THE COURT: I know if you have to go back

5 redo it, sure.

of

6 THE VIDEOGRAPHER: But if I can get a copy

7 the transcript, I can at least get working on pulling

8 out the words "objection," that is possible now, and

9 then when we get rulings, I can, Judge, go over page

10 and line and pull the rest of that out and get it as

11 quickly as possible.

12 THE COURT: I thought we had -- no, we

doctor

13 haven't got a total on these. I don't want the

14 to sit around all day while we do this.

15 MR. ROSENBLATT: Of course not. That's

16 exactly why I suggested -- it's really not a long

17 transcript.

18 Yes. I've got it.

19 So I think what we're talking about is -- I

20 mean, my preference would be that --

21 THE COURT: I'm just trying to figure out

22 technically, if he goes through during the course of

23 the doctor's testimony and eliminates the words

24 objection and whatever follows but leaves the answer

25 in, if I then come back and I decide that that

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1 objection was valid and rule that the answers should

be

2 stricken, at that point you can always turn the sound
3 down.

4 THE VIDEOGRAPHER: Yes.

5 THE COURT: And eliminate that answer.

it,

6 MR. REID: That's the way we ought to do

7 Your Honor.

8 THE COURT: Which is a lot easier than
9 eliminating one word.

10 THE VIDEOGRAPHER: Oh, absolutely. What I
11 can do -- what I'm talking about doing is taking the
12 transcript back to the office right now with the
13 original videotape and editing out all of the
14 objections to form, if they're not overspoken.

15 THE COURT: Right. Right.

16 THE VIDEOGRAPHER: Then when you make your
17 rulings as to what comes in --

18 THE COURT: Then we can --

we

19 THE VIDEOGRAPHER: -- and what comes out,

20 can remove the sound accordingly.

21 THE COURT: I think we can do that.

some

22 MR. REID: That would include there were

23 motions to strike also. In other words, any comments
24 by the opposing counsel to be removed.

25 THE COURT: It's tough. It's tough

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hands

let's

in,

here,

1 because --
2 MR. REID: We tried to anticipated this.
3 THE COURT: -- if they're overspoken --
4 MR. REID: Yes. We tried to raise our
5 and signal the witness to wait. Most of the time it
6 worked.
7 THE COURT: And colloquy, whatever the
8 colloquy.
9 MR. REID: Yes. Thank you.
10 THE COURT: Try that and see how it works
11 out.
12 THE VIDEOGRAPHER: Okay.
13 THE COURT: Okay.
14 Before do you that, before you do that,
15 come sidebar.
16 (Discussion off the record.)
17 THE COURT: Okay. Can I have the doctor
18 please?
19 (The witness entered the courtroom.)
20 THE COURT: All right, Doctor. Come up
21 please.
22 THE WITNESS: Good morning, Your Honor.
23 THE COURT: Good morning, sir.
24 Have a seat, please.
25 Concerning the situation with this letter

to

of

1 from -- who wrote the letter?

2 MR. ROSENBLATT: Pepples of R.J. Reynolds

3 President Nixon.

4 THE COURT: Which you don't have a copy of,
5 you just want to stay away from that.

6 THE WITNESS: Yes, sir.

7 THE COURT: And any reference as a result

8 that letter that some activity took place. You
9 understand the idea that you were either let go or
10 whatever because of the letter, but we don't have it,
11 so we can't make reference to it.

12 THE WITNESS: Yes.

13 THE COURT: Rather than get in trouble
14 talking about something we can't do. Okay?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. Let's get the jury
17 out, please.

18 (The jurors entered the courtroom.)

19 THE COURT: All right. Be seated, folks.

20 Good morning to you all.

21 JURY PANEL: Good morning.

22 THE COURT: Raring to go?

23 Okay. We are going to resume today.

24 I did want to find out something about the
25 schedule for tomorrow. I told them I would let them

1 know today about tomorrow. We haven't discussed that
2 yet today about tomorrow, but we will. Before the
3 lunch hour, we'll give you some idea, so if you have
to
4 make arrangements one way or the other about
tomorrow.

5 In any event, we're ready to proceed, so
call
6 your next witness, please.

7 MR. ROSENBLATT: Dr. Steinfeld is in the
8 witness chair.

9 THE COURT: Stand up, please, sir.
10 Thereupon:

11 JESSE L. STEINFELD, M.D.,
12 having been called as a witness, was duly sworn,
13 examined, and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. ROSENBLATT:

16 Q. Dr. Steinfeld, please tell the members of
the
17 jury your full name and your present address.

18 A. It's Jesse Leonard Steinfeld. And I live
at

19 [DELETED], if you speak
20 Spanish, in San Diego, California.

21 Q. You are a medical doctor?

22 A. Yes.

23 Q. And you have served as Surgeon General of
the
24 United States; correct?

25 A. Yes.

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with

undergraduate

1 Q. Okay. I'm going to go through your
2 curriculum vitae in chronological order, starting
3 you received a bachelor of science degree from the
4 University of Pittsburgh. That was your
5 work; is that correct?

6 A. That is correct.

7 Q. And where did you go to medical school, and
8 what year did you graduate?

9 A. I went to Western Reserve, which is now
10 called Case Western Reserve in Cleveland, Ohio, and I
11 graduated in 1949.

12 Q. And after having received your M.D. degree,
13 did you serve an internship?

14 A. Yes, I did.

15 Q. And for how long and where was that?

16 A. That was for one year at Cedars of Lebanon
17 Hospital in Los Angeles.

18 Q. And following the completion of your
19 internship, did you serve any residency?

20 A. Yes. In internal medicine at the Veterans'
21 Administration Hospital in Long Beach.

22 Q. And for how long a period was that?

23 A. It was in two different time episodes, but
24 the Korean -- I don't know whether you call it war or
25 conflict -- it was a real war, broke out, and most of

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Force
residency,
experimental
actually
fellowship
I
College,
which
AEC
General.

1 the young physicians left for the Army, Navy, Air
2 or Marines or Public Health Service.
3 Q. Okay. Now, I see in looking under
4 there's something mentioned, laboratory of
5 oncology. What was that all about?
6 A. Well, I was interested in research,
7 cancer research, and while I was in the residency, I
8 had applied for an Atomic Energy Commission
9 in the medical sciences, and that was approved while
10 was on duty on a Coast Guard cutter in the North
11 Atlantic.
12 So, when I came back, I went to Reed
13 which is where the first part of the fellowship was,
14 and then to Long Beach, which had the first
15 radioisotope unit in the V.A. system and one of the
16 first in the country.
17 I should add that the -- at that time,
18 was 1951, required a full-field clearance to get an
19 fellowship. The Cold War was very cold, and it was,
20 you know, the same kind of full-field clearance for
21 that fellowship that I had for the job Surgeon

22 Q. And what kind of clearance is that? What
23 process does one have to go through?
24 A. One has to list every place one has ever
25 lived, and I'm not sure what all happens, but I know

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where 1 the FBI visits every one of the places, including
I 2 I was born and -- there's a funny story about it, but
3 don't think you want to take the time. But, anyway,
4 they visited the poolroom which is two doors from
where 5 I was born.

you 6 Q. So they -- in order to get the clearance,
7 were subjected to an FBI investigation?

8 A. Yes.

in 9 Q. Okay. Now, I notice that you're licensed
10 a number of states, Ohio, California, District of
How 11 Columbia, Maryland, Minnesota, Virginia, Georgia.

medical 12 is it that you got licenses in so many states,
13 licenses in so many states?

and 14 A. Well, I was in the service for one thing,
15 I guess my family says I can't keep a job. But
anyway,

went 16 I had jobs in most of those states: Ohio where I

17 to medical school; California where I practiced; the
18 District of Columbia, Maryland, when I was at NIH;
19 Minnesota when I was at the Mayo Clinic; and then
20 Virginia and Georgia where I was dean and president
of
21 the medical college.

22 Q. Now, you are board certified in the field
of
23 internal medicine; is that correct?

24 A. Yes, I am.

25 Q. Now let me go through your teaching career

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1 and background. You taught at the George Washington
2 University School of Medicine from 1954 to 1958.

3 A. That's correct.

4 Q. What subjects were you teaching?

5 A. Well, actually I was running their radio
6 isotope unit, which primarily did, in those days,
7 iodine uptakes, and blood volumes. There were very
few
8 isotopes that we had available; iodine 131, which was
9 used for measuring thyroid function, iodinated
albumin
10 for measuring blood volume, and chromium for labeling
11 red cells and seeing how long they survived.

12 And I made rounds on the general internal
13 medicine wards with students, interns and residents,
14 and I trained a number of people in the use of
15 isotopes.

16 Q. The George Washington University School of
17 Medicine is located where?

18 A. Well, it's located in downtown Washington,
19 but I was at D.C. General, which was called Galinger,

I

20 believe, which was the -- well, the equivalent of

L.A.

21 County or San Diego County. It was a public

hospital,

22 city, county, state.

23 Q. Try to keep your voice -- it seems like my
24 microphone has gotten louder.

25 THE COURT: We did fix it.

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1 MR. ROSENBLATT: Okay. Okay. I think the
2 witness needs it more than I do.

3 THE COURT: No. It was a defective mike

and

4 we found out over the week. So, anyway, it's a new
5 mike. I think we took it from this podium.

Everybody

6 can hear. And now you can turn it off.

7 MR. ROSENBLATT: No. I want to turn off
8 theirs.

9 THE COURT: No. The problem was that when

we

10 finished our sessions, the mike was still alive, and
11 you know there's a lot of in talk with the attorneys
12 and all and that was being fed into another room. It

13 was terrible.
14 Okay.
15 MR. ROSENBLATT: Okay. I'll try to stand
16 back a little.
17 BY MR. ROSENBLATT:
18 Q. Now, you became a professor of medicine at
19 the University of Southern California. Is that in
20 Angeles?
21 A. Yes.
22 Q. Through 1958 through 1968 you started out
23 an assistant, you became an associate professor and
24 became a full professor. That was for about a ten-
25 period.

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1 So tell us generally what your function was
2 at the University of Southern California School of
3 Medicine, in addition to your teaching
4 responsibilities?
5 A. Well, my main function was to set up the
6 medical oncology unit, medical oncology being the
7 treatment of cancer with drugs, as opposed to surgery
8 or radiation. And that was what I had done at the
9 National Cancer Institute in Bethesda from '53 to
10 which is when the clinical center opened in 1953.

'58,

11 And so I set up a training program and a
12 treatment program, and we joined something called the
13 Western Cooperative Cancer Chemotherapy Group,
because
14 it's difficult to get enough patients with a
particular
15 type of cancer to be certain whether a drug is
working
16 or not.

17 There were, I've calculated, at least 200
18 different kinds of human cancer, histologic types.

19 Q. By histologic, you're referring to tissue
20 types?

21 A. Yes. Cellular types and tissue.

22 And we set up a training program. And by
the
23 time I'd left, we had multiple grants totaling about
24 \$1,000,000. The last one was a planning grant to
build
25 a cancer hospital because there really wasn't a
cancer

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1 hospital of any size between Texas, M.D. Anderson,
and
2 Los Angeles, except for the City of Hope, which
3 actually was a smaller institution, at least at that
4 time.

5 But I did give lectures on cancer and on
6 hematology. The two were mixed. There were a number
7 of hematologic malignancies, leukemia, lymphomas,

8 myeloma.

9 Q. Now, the field of hematology encompasses
10 what?

11 A. Blood, coagulation, red cells, platelets,
12 white cells.

13 Q. You were the deputy director of the
National
14 Cancer Institute in 1968 and 1969. First of all,
what

15 is the National Cancer Institute?

16 A. Well, the National Cancer Institute is a
17 governmental organization that was the second of the
18 National Institutes of Health. The first one was
19 called the National Institute of Health, which was --
20 whose goal was to find and treat infectious diseases,
21 as well as mechanisms to prevent them and also
22 nutritional diseases. Those were the two big issues
23 that the National Institute of Health first worked
on.

24 And then in 1937, the National Cancer
25 Institute was set up, and it's interesting to read

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1 about the setting up of it. The Congress,
politicians
2 wanted to set it up. The scientists felt there was
no
3 way that one could spend \$37,000 worthwhile in cancer
4 research.
5 I think the budget now is in the billions.

did

6 But in any event, the cancer institute, earlier on,
7 studies on animals, mice, rats, rabbits, guinea pigs,
8 and also laboratory tests, chemical synthesis of
9 compounds and testing to see whether or not they were
10 carcinogenic.

United

11 Q. Now, you became Surgeon General of the
12 States in what year?

13 A. '69.

14 Q. And you served until when?

15 A. '73.

16 Q. Now, how was it that you were selected as
17 Surgeon General of the United -- is it -- did you
18 actively seek the position?

19 A. No. No.

that

20 What happened was the sequence of events

he

21 was supposed to occur in Bethesda, that is, the
22 director of the Cancer Institute, had been told that

23 was going to be a director of the National Institutes
24 of Health, and the position of deputy director was
25 created as kind of a training ground, and I was in

that

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1 training position.

2 Unfortunately, the director did not get

3 the -- the NCI -- did not become director of NIH, and

4 my wife and children wanted to go back home to South
5 Pasadena, California, as did I, and they were -- we
6 moved out. They left, and I was still in Bethesda.

7 Meanwhile, Richard Nixon, Hubert Humphrey,
I
8 believe, ran for the presidency.

9 Q. '68?

10 A. And a gentleman named -- a physician named
General
11 John Knowles, who was the head of Massachusetts
12 Hospital, had organized physicians for Nixon, and he
13 was to be appointed as the assistant secretary for
14 Health and Scientific Affairs. There were a lot of
15 politics involved.

16 Senator Dirkson, who represented Illinois -

--
17 Q. I think you may be giving us a little more
18 who recommended -- to your knowledge, who recommended
19 that Jesse Steinfeld become Surgeon General?

20 A. I can't get there from here. I can -- I
can
21 do this in a minute if you will allow me.

22 Q. Okay. Fine. As long as you promise it's a
23 minute.

24 A. Okay. Time me.

25 Dirkson objected. Knowles did not get the

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1 job. They finally appointed a Dr. Roger Egeberg, who

2 had been the dean at USC and who supported me in
3 building the cancer hospital.

4 He came to Washington. He became the
5 assistant secretary. He said that this was a Vietnam
6 era, students were giving him a hard time. He needed
7 six or eight weeks of vacation in Hawaii, and he
8 accepted this job, if I would come down from Bethesda
9 every day and work in the office for a couple of
weeks,
10 clean up all of the papers. And so I did.

11 Except a couple weeks kept dragging on, and
I
12 kept, you know, saying, you know, my wife wants me to
13 go home. And ultimately -- by the way, there was a
lot
14 of consideration given to doing away with the Public
15 Health Service, which would mean no Commission Corps,
16 no Surgeon General.

17 But Bob Finch, after I had actually been
18 doing the job for about six months, asked if I would
19 stay, were he to appoint me Surgeon General and
promise
20 that the corps would remain alive.

21 Q. Bob Finch was at that time the secretary of
22 Health, Education and Welfare?

23 A. Yes. Unfortunately --

24 Q. Now, the Surgeon General is called a
25 presidential appointment, technically?

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before

1 A. It is a presidential appointment.

2 Q. It is. Had you known President Nixon

3 you were appointed Surgeon General?

4 A. No, I had not.

5 Q. Okay. Now, I'm going to come back to the
6 time frame when you were Surgeon General between 1969
7 and 1973, but after you left the office of Surgeon
8 General, I want to discuss your career up until the
9 time you retired.

10 After you left your position as Surgeon
11 General of the United States, you became professor of
12 medicine and oncology at the Mayo Medical School in
13 Rochester, Minnesota, and what was your focus in that
14 job?

is

15 A. The Mayo Clinic wanted -- the Mayo Clinic
16 a great place, but it had applied to be designated as
17 one of the major cancer centers that were listed in

the

18 bill to -- Conquest of Cancer Bill in the mid --

maybe

19 '72, '73, and they wanted me to re-do their

application

20 and to be the head of the cancer center, if it were
21 approved by the NCI.

22 And I redid the application, and it was
23 approved, and it turned out I wanted to go back into
24 clinical medicine, which is when I went to the Mayo
25 Clinic, and --

1 Q. By clinical medicine, you mean actually
2 seeing patients?

3 A. Yes. Yes. But I found I was overwhelmed
4 with paper again, with grants of all kinds and
filling
5 them out and applying for other grants, and so I
6 decided it would be much better to go home. Home was
7 Southern California.

8 And it also didn't get nearly as cold in
9 Southern California. So we left.

10 Q. Okay. And then you became the chief of the
11 medical service at the Veterans' Administration
12 Hospital in Long Beach from 1974 to 1976?

13 A. Yes. Actually that was the University of
14 California, Irvine appointment. But most of their
15 patients were at Long Beach, so -- and most of their
16 students were at Long Beach for the clinical years.

17 Q. So in that job, you were actually
practicing
18 clinical medicine, seeing patients, treating
patients,
19 making diagnoses?

20 A. And flying back and forth to Washington,
21 because I was still on a lot of committees for the
NCI,
22 and actually others for EPA and several other
23 governmental organizations.

24 Q. EPA being the Environmental Protection
25 Agency?

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1 A. Yes. I'm sorry. Yes. I'm sorry with the
2 acronyms.

3 Q. That's okay.

4 Now, you left the University of California
in
5 Irvine, and you became the dean of the School of
6 Medicine at the Medical College of Virginia; is that
7 correct?

8 A. That is correct.

9 Q. Now, did that mean that you were once again
10 leaving the clinical practice of medicine and taking
on
11 essentially an administrative job --

12 A. Yes.

13 Q. -- as the dean of the medical school?

14 A. It turned out that that was exactly the
case.

15 Q. Looking at your CV, in addition to being
the
16 dean of the medical school, you were also a professor
17 of medicine. Did you actually have teaching
18 responsibilities, in addition to your administrative?

19 A. Yes, but nothing like 20 years earlier or
15,
20 when I was at USC, Southern Cal.

21 Q. Now, you were the dean of the School of
22 Medicine at the Medical College of Virginia from 1976
23 through 1983. And in 1983, you became the president
of
24 the Medical College of Georgia and professor of
25 medicine.

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1 What were your duties as president of the
2 Medical College of Georgia?

on

3 A. The Medical College of Georgia had fallen
4 some hard times, and they wanted somebody to come in
5 and reorganize it. And we set out a long-range plan.
6 And they just finished building the last of the
7 hospitals we planned, which is a children's hospital,
8 but we -- I say we, the management at MCG, Medical
9 College of Georgia, revamped the entire system.

big

10 I would add parenthetically that MCG was
11 built right after World War II, and it was built the
12 way most veterans' hospitals are built, which was a
13 inpatient operation, a thousand beds. And nobody
14 thought about outpatients. And so there were, as I
15 remember, 31 different places in about a five-block
16 radius where individuals went to see different
17 when they were not actually in the hospital.

doctors

18 So we built an outpatient building, among
19 other things.

20 Q. Now, you gave up your position as president
21 of the Medical College of Georgia in 1987; is that
22 correct?

23 A. That's correct.

24 Q. And what have you done professionally since

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1 A. Professionally I have been in this
courtroom
2 once before, and this is my second time. I'm not
sure
3 that's professional.
4 Q. I guess -- I guess basically what I'm
asking
5 is, did you -- do you have a sideline as a stand-up
6 comedian?
7 A. I'm working on it.
8 Q. Or a sit-down comedian.
9 Try to put that on hold.
10 A. Okay. Sorry.
11 Q. That's okay.
12 Did you retire, as a practical matter, in
13 19 --
14 A. Well, I retired -- I had no choice. I was
15 operated on in '85. I had developed atrophy in one
arm
16 and weakness, and had a film of my neck taken, and I
17 remember looking at it -- looking at films and
saying:
18 Who is that old man? And they said: That's you.
19 And I had multiple fusions in my neck. I
had
20 weakness in the leg. I was in a wheelchair. I was
21 really not able to function as the president of the

22 Medical College of Georgia. I really was not able to
23 function as a physician. And so I retired.
24 Q. And you've lived in [DELETED] ever since
25 left the Medical College of Georgia?

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looking
in
1 A. We rented in Long Beach while we were
2 for a home there. We have three daughters who lived
3 that area at the time.

Let
4 Q. Okay. Now, you've got a section of your
5 curriculum vitae, administrative responsibilities.
6 me ask you about just a few of them.

Journal
7 You were the associate editor of the
8 of the National Cancer Institute. You've already
9 explained what the National Cancer Institute is. But
10 as the associate editor, what were your duties?

at
pick
determine
11 A. Well, in those days, it was a much smaller
12 journal than it is now, and we would meet every --
13 every week or every two weeks to review articles that
14 had been submitted and to determine who should be --
15 there are several stages of review. First you look
16 it and see what field it's in, and then you try to
17 the best people to review it, and then you read the
18 article and its reviewers' points of view and

19 whether or not it should be published.

20 Q. And you --

21 A. And my role was as a clinician, because the
22 NCI, as I had indicated earlier, from '37 to '73, had
23 no patients, nor had any of the other institutes.

24 Q. And you've been a long-time member of the
25 editorial board of a publication called Cancer

Research

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1 from 1965 to 1987.

2 What does the publication Cancer Research
3 focus on?

4 A. That was the original publication of the
5 American Association of Cancer Research, which was

the

6 first and premier cancer research organization in the
7 country, and that was their journal. And this one --
8 the editors, associate editors, there were lots --

many

9 more, and they were all over the country.

10 So this really involved having the staff
11 determine who should review what articles.

12 And so I would get articles to review and
13 comment on, and it's done anonymously, or should be,
14 and the staff ultimately brings out the journal.

15 Q. Now, you were the chief of the United

States

16 delegation to the 23rd, 24th and 25th, World Health

17 Assemblies, World Health Organization, and apparently
18 this was during your tenure as Surgeon General in the
19 early '70s.

delegation?

20 What did you do as chief of that

21 A. Stanley, I'm sorry to do this. I kept Red
22 China, Cuba and North Korea out of the WHO.

23 No. We -- it was a political --

24 Q. It was political --

25 A. It was a political meeting. The work was

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countries

1 done during the year by the actual people who worked
2 for WHO. They did excellent work in trying to stamp
3 out malaria, improve nutrition in undeveloped

4 and distribute drugs, I mean, pharmaceutical drugs to
5 heal. But the actual meeting was political. I mean,
6 there was no question.

7 The State Department wrote the talk that I
8 would give, and it had nothing to do with health.

9 Q. Okay.

10 A. Or very little that I remember.

11 Q. A little change of pace.

12 A. Yes.

13 Q. Now, the jury has already heard from
14 Dr. Julius Richmond, who was Surgeon General of the
15 United States during the late '70s. You were Surgeon
16 General of the United States 19 -- reports came out

17 during the years 1970, '71, '72, '73.

18 The Surgeon General's Reports that were
19 published during your tenure, what subjects did they
20 cover?

21 A. Well, the first one -- first of all, the
22 first Surgeon General's Report was in '64. It was a
23 brown book. It covered all kinds of diseases. The
24 only one that it really focused on in saying that
25 cigarette smoking was sufficiently shown to be a

cause

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1 of cancer, that remedial action be taken. Those are
2 the words paraphrased.

3 Then there were several very thin, little
4 booklets which were updates on various subjects,

heart

5 disease, Buerger's disease, which is arteriosclerosis
6 obliterans where the ends of the fingers and toes

fall

7 off.

8 And Dan Horn was the head of the
9 Clearinghouse on Smoking and Health, which was
10 responsible for preparing the report, and he and I
11 talked because I had a copy of the '64 report, and I
12 had copies of the three little supplements, but most
13 people in the country didn't.

14 And I felt we really should do a
15 comprehensive report again. So that was the first

one.

16 Q. That was 1970?

can't

17 A. I think that was '70 or '71. I'm -- I

18 remember. It's a long time ago.

19 Q. Okay.

20 A. And then the reports were shorter, but

21 focused on other subjects. And ultimately when more

22 and more people got into the field -- this was not a

23 very exciting field of medicine, I must say, 35 years

24 ago. As more and more research was done, it became

25 possible to devote an issue to such things as women

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1 smokers or something -- low-yield cigarettes,
2 cigarettes that presumably yielded a lower tar and
3 nicotine content to the smoker.

4 So those things came along later.

the

5 Q. There's a section in your curriculum vitae
6 called consultantships, and you mentioned being on

did

7 Committee for Tobacco and Health, the American Cancer
8 Society a long time, from 1973 through 1994. What
9 that committee do?

10 A. Well, it met to decide what actions the
11 American Cancer Society should take with respect to
12 smoking and health.

13 And I was for much of that time the head of

a

smoking

14 subcommittee on research needs in the field of
15 and health.

Association

16 Q. The section on awards and honors, you were
17 president of the American Society for Clinical
18 Oncology, governor of the American College of
19 Physicians, you were president-elect of the
20 of Military Surgeons of the United States; correct?

21 A. That's correct.

Health.

22 Now, you received from the American Cancer
23 Society in 1990 their special award for contributions
24 to combatting smoking, Committee on Smoking and
25 What is that recognition for?

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1 A. I think just as you described it.

I

2 Q. Now, you've got a list of publications, and
3 will ask you about a few of them. Some 72
4 publications. And I assume this is, obviously,

current

5 through your tenure at the Medical College of

Georgia.

6 One publication, the Chemical Treatment of
7 Advanced Cancer in Man, what was the focus of that
8 article, 19 -- it goes back quite a ways, 1967 in the
9 National Cancer Institute monograph?

10 A. I can't remember that one specifically.

you're

11 Q. But in terms of the field of oncology,
12 involved in nonsurgical methods of treating cancer?

13 A. That is correct.

14 Q. I think everyone's heard about chemotherapy
15 and radiation. Are there other methods of treating
16 cancer nonsurgically, other than chemotherapy and
17 radiation?

the

18 A. Well, chemotherapy covers a multitude of
19 modalities. Immunotherapy is an attempt to produce
20 antibodies to a tumor or to -- not only produce
21 antibodies, but hook them up to radioactive isotopes
22 that would presumably hone in on the tumor and kill
23 cells.

24 But that field is still in its infancy, as
25 far as I'm concerned.

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the

1 Q. Now, you did an article which appeared in
2 National Tuberculosis and Respiratory Disease
3 Association publication: Cigarette Smoking is on the
4 Increase Among Women. And the date of that article
5 1971.

is

6 And I guess the title explains it. You
7 simply were demonstrating that cigarette smoking had
8 increased amongst women. Was there any other point

of

9 the article?

10 A. I think I -- some of those articles are --
11 were not articles written by me, they were talks that
12 gave. I was much younger and had a better vocabulary
13 and probably more enthusiasm, and so I was asked to
14 turn the talk into an article, so that's how that
15 about.

16 Q. And here's either an article or a speech
17 while you were Surgeon General in 1972, The
18 Role, The Physician's Responsibility to his Smoking
19 Patient.

20 Back in 1972, what, in your view, was the
21 physician's responsibility to his smoking patient?

22 A. Well, first of all, to take a history and
23 find out if the patient smoked, and if so, to let the
24 patient know that there were serious -- potential
25 serious consequences, and depending on the amount and

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1 kind of cigarette, the consequences would be
different.

2 I would also like to point out, 1972 is a
3 long time ago, and physicians were still smoking.
4 had begun quitting in larger numbers at about that
5 time, but -- I believe it would be hard for a
physician

6 with a cigarette in his hand to advise his patient to

7 stop smoking.

8 So I think I urged physicians to stop
smoking

9 and then to learn about the techniques, such as they
10 were, to get their patients to stop smoking.

11 It turns out that many patients did stop
when

12 their physicians told them to. But there were very
few

13 physicians who were telling patients to stop smoking.

14 Q. When did that become, you know, more
15 prevalent where --

16 A. It's been a gradual change in society's
17 attitude towards smoking as more and more information
18 about more and more problems resulting from smoking
19 develop.

20 I must say that people in the industry on a
21 number of occasions would say Steinfeld doesn't know
22 what's he's doing, smoking causes everything from
23 halitosis to cancer, to ingrown toenails. And I
don't

24 think we ever mentioned ingrown toenails. But my
point

25 is that when one burns a vegetable leaf, such as

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1 tobacco, there are -- which has several components to
2 begin with, there are at least 4,000 -- I've heard
from

3 T.C. Tso from the agriculture department from the

4 United States say it may be closer to 6,000 different
5 chemicals, and when the body is exposed to 6,000
6 different chemicals that it has not been exposed to
7 during evolution, it may not know how to cope with
8 them.

at 9 And if the individual is taking medication
10 one time or another, has a disease of one sort or
11 another, there are all kinds of different
consequences,
12 and potential diseases, and we keep getting new ones
or
13 hearing about them every few weeks.

14 The last one I read about, apparently the
15 urologists have known for --

16 MR. KIRBY: Objection, Your Honor.
Hearsay.

17 THE WITNESS: I'm --

18 THE COURT: I make the decisions. But he's
19 right.

20 THE WITNESS: -- overruled?

21 MR. ROSENBLATT: This time.

22 BY MR. ROSENBLATT:

23 Q. Dr. Steinfeld, we've had testimony in this
24 case, the jury's been told, the 1964 Surgeon
General's
25 Report concluded that cigarette smoking causes lung

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1 cancer in men. That was the conclusion 34 years ago.

was

2 Now you're telling me that in the early '70s, there
3 still a large number of doctors smoking.

4 A. Yes.

General's

5 Q. Didn't they believe the '64 Surgeon
6 Report?

7 MR. KIRBY: Objection.

8 Q. What do you attribute -- certainly they
9 understood --

10 THE COURT: Compound question.

11 BY MR. ROSENBLATT:

large

12 Q. Okay. My question is, in view of the
13 conclusion reached in the 1964 Surgeon General's
14 Report, why, in your opinion, were there still a
15 number of doctors smoking in the early '70s?

Hearsay.

16 MR. KIRBY: Objection, Your Honor.
17 Speculation.

18 THE COURT: Overruled.

19 A. I believe they were addicted. I don't know
20 any of them that said they wanted to smoke. Most of
21 them said they would like to quit.

22 I know, in fact, medical oncologists who
23 continued to smoke until they developed the diseases
24 that took them off the face of the earth.

25 MR. HEIM: Your Honor, we move to strike

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1 that.

2 THE COURT: Yes. I'm going to sustain the
3 objection and strike the answer --

4 THE WITNESS: Okay.

5 THE COURT: -- based upon the fact that we
6 don't have anything to support that.

7 MR. MOSS: Would the jury be instructed --

8 THE COURT: I imagine the jury is
instructed.

9 I will instruct them to disregard the last answer.

10 BY MR. ROSENBLATT:

11 Q. You knew medical oncologists who
specialized

12 in cancer, the treatment of cancer, the diagnosis of
13 cancer who were, themselves, smokers; correct?

14 A. Yes. Yes.

15 Q. Now, have you known cancer surgeons who
16 actually removed cancerous lungs from people with a
17 history of heavy smoking who themselves were smokers?

18 A. Yes, but I didn't -- most of my
associations

19 were with medical oncologists and hematologists,
20 because that was the group that --

21 Q. That's the field that you were in?

22 A. That's the field I was in.

23 Q. Now, I'm going to ask you a couple of
24 questions now, unrelated to tobacco, but during --
25 during your tenure as Surgeon General of the United

topics;

1 States, you dealt with a bunch of controversial

2 correct?

3 A. Yes, sir.

of

4 Q. What was your position as Surgeon General

5 the United States, for example, on the subject of

6 fluoridating the water supply?

7 MR. KIRBY: Objection, relevance.

8 THE COURT: Overruled. Tie it up. If he

9 doesn't tie it up, then we'll strike.

10 Right now, subject to being tied up, go

11 ahead.

12 MR. ROSENBLATT: Well, let me go sidebar.

13 THE COURT: All right. Let's go.

14 MR. ROSENBLATT: And I'll tell you exactly.

15 THE COURT: Okay.

16 (The following proceedings were had at

17 sidebar:)

18 MR. ROSENBLATT: I haven't become Mr. Nice

19 Guy all of a sudden, but I really thought this is

20 helpful to them. I'm establishing that he made other

21 enemies besides the tobacco -- that's where they

22 usually go on cross.

23 And quite frankly, I'm -- I'm -- from my

24 standpoint, I'm preempting it a little: You made

25 enemies of the industry, so when they get up and they

1 start asking questions, you know, which I assume they
2 will on cross, you know, the tobacco industry was
3 not --

4 THE COURT: I didn't know where you were
5 going with this.

6 MR. ROSENBLATT: That's where I'm going.

7 THE COURT: He had something to do with
8 flouride?

9 MR. ROSENBLATT: I also want to demonstrate
10 that the Surgeon General is -- 100 percent of his

focus

11 was not tobacco. He was involved in other subjects.

12 THE COURT: Okay.

13 MR. ROSENBLATT: I don't intend to dwell on
14 any of it.

he

15 THE COURT: Okay. So whatever it was that
16 did vis-a-vis flouride ruffled the feathers of some
17 people, period.

18 MR. ROSENBLATT: Correct.

19 THE COURT: That's where you're going with
20 it.

21 MR. ROSENBLATT: Correct.

22 MR. HEIM: That's also kind of speculative
23 whether it ruffled other people's feathers or didn't
24 ruffle other people's feathers. It's tangential

stuff.

25 THE COURT: If they took definitive action

1 and tried to stop the report, it might have some
2 bearing on it. I didn't understand where you were
3 going.

4 MR. KIRBY: I don't understand the
relevance

5 of it to what we're trying. If we conduct a cross
6 examination which goes into those areas, which I

don't

7 think it will be necessary based on Your Honor's
8 rulings, then it might or might not be an appropriate
9 matter for redirect.

10 I just didn't understand.

11 THE COURT: Yes. It seems a little far
out.

12 MR. ROSENBLATT: I think I have a right to
13 show in terms of the general duties the Surgeon

General

14 is involved.

15 THE COURT: That's fine. You can ask him
16 that.

17 MR. ROSENBLATT: Okay.

18 THE COURT: But I think the implication --

19 MR. ROSENBLATT: Fine. I'm happy to drop
20 that aspect.

21 THE COURT: He's entitled to talk about
what

22 the duties are.

23 MR. ROSENBLATT: Other issues.

24 THE COURT: While we're here, what is this
25 thing that they gave me here? Just so that I

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1 understand what I'm supposed to do with it.

2 MR. HEIM: What is it, Judge?

3 THE COURT: This is Dr. Spears. Is this a
4 copy?

5 MS. LUTHER: That's a copy of the
deposition.

6 MR. HEIM: That's the one.

7 THE COURT: There's two copies here?

8 MR. HEIM: What does he say in the letter?
9 Is there more than one copy?

10 THE COURT: It doesn't say.

11 MR. KIRBY: Courtesy copy of amended
12 objections.

13 THE COURT: Well, this is 1 through 15.
What

14 is this? They're obviously two of them.

15 MR. KIRBY: It's just --

16 THE COURT: I only need to read one of
them?

17 MR. KIRBY: Are they different dates?

18 THE COURT: I don't know if they're
different

19 dates. This is April 15 -- yes, they are.

20 MR. KIRBY: That's what it is.

21 MR. HEIM: That's what it is. More than
one

22 volume.

23 MR. KIRBY: I think where the tabs start
are

24 exhibits and not text.

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1 MR. KIRBY: It's not a miniscript.

2 THE COURT: I'll have it for you tomorrow.

3 MR. KIRBY: I'll tell Mr. Newsom.

4 (The sidebar conference was concluded, and
5 the following proceedings were held in open court:)

6 BY MR. ROSENBLATT:

7 Q. Dr. Steinfeld, where I was going with that
8 question was, as Surgeon General of the United
States,

9 during your approximately four-year tenure, you were
10 concerned with things other than tobacco issues?

11 A. Oh, my God, yes.

12 Q. Tell us about some of them, some of the
13 issues that in the interest of public health you got
14 involved in, you know, to the extent of issuing
15 directives or making policy statements or trying to
get
16 certain things accomplished?

17 A. Well, the first was flouride when I was an
18 acting deputy assistant secretary, and there was --
I'm
19 not sure -- there was a Surgeon General that was --
the

20 biggest stacks of papers, of which there were many,
21 many stacks of papers in the offices of the Surgeon
22 General and the assistant secretary for Health and

as
appointment
23 Scientific Affairs, because the job had been vacant,
24 I described earlier, because John Knowles'
25 had been held up and, in fact, never occurred.

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up
home.
1 So I went -- and I was living alone because
2 my family had returned to California. I used to get
3 very early, come down, eat breakfast at HEW, work all
4 day and eat dinner there or have a chicken pie at

papers.
not
5 So I was able to read through lots and lots of
6 This was impressive to doctors maybe, but I'm sure
7 to lawyers.

made
Service,
enemies
8 In any event, the first decision that I
9 was that the fluoridation of water supplies should be
10 the policy of the United States Public Health
11 and, therefore, the United States. There were
12 there because there were people --

13 Q. Well, I'm not so much --

14 A. Okay.

you
of
15 -- interested in asking you about the
16 enemies. But, okay, what was the reason behind --
17 say you basically issued a policy directive in favor

18 fluoridation of water. Why?

19 A. Well, the most common disease in the United
20 States at that time, according to my next-door
21 neighbor, who was the national director of the
22 Institute of Dental Research, 99 percent of the
23 population either had or would have caries, dental
24 caries.

25 Q. Cavities?

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from 1 A. Yes. And over a period now, let's see,

2 1969 through today, in addition later, I think
3 toothpaste companies began putting flouride in.
4 However, now, dental caries is not a common disease
5 and, in fact, a number of dental schools have closed
as 6 a result.

7 So, that was not a deadly disease, but it
was

8 a very common disease, and painful for people who had
9 their teeth filled.

10 Q. And you feel that the fluoridation of the
11 water essentially cured that problem? Not 100
percent,

12 obviously, but --

13 A. It was a major step, I would say. And we
14 don't have as many dentists.

15 Q. What, if anything, did the Surgeon General
16 during your tenure take a position on programming on

17 television?

18 A. My predecessor, William Stuart, and Will

Congress

19 Stuart followed Luther Terry, was asked by the

produced

20 to set up a committee similar to the one that

21 the first report on smoking, and he did.

22 He found groups of people who were

23 knowledgeable about programming, about behavior of

24 children and youth and adults, and he did one other

the

25 thing for which I got blasted; namely, he sent out

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networks

1 list of the experts to the heads of the three

2 asking if they were acceptable.

Luther

3 I will remind you that Surgeon General

4 Terry sent a list of the experts he was going to

5 appoint to this first committee on smoking and health

6 to the heads of the tobacco companies for them to

7 strike out anybody they felt was prejudiced.

8 And I wasn't in the office very long when I

9 was confronted with, why did you give these heads of

10 the networks an option to cross out people that they

11 felt were prejudiced?

12 And I said, well, I actually didn't do it,

hopefully,

13 but I agree with it because that's the way,

14 we'll get an accurate report.

15 Q. During your tenure, was a report -- a
Surgeon
16 General's Report issued on the subject of
environmental
17 tobacco smoke or secondhand smoke?

18 A. There was a chapter, yes. Well, I hadn't
19 finished with the other, but that's okay.

20 Q. Go ahead. Sometimes, you know, I feel
you're
21 veering off, so I -- but if you want to finish, go
22 ahead.

23 A. Yes. I would like to.

24 Q. Go ahead.

25 A. We, within just a few years, and for
several

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1 million dollars, quadrupled the amount of research on
2 television, and a violence index was produced. We
got
3 the networks to agree to a family time in the
evenings
4 when there would be no violence. I think they
adhered
5 to that for a while and then stopped.

6 Now, about a year ago, another report was
7 produced on television and violence, and it was
almost
8 identical to the one we had produced 25 years
earlier.

9 So not much progress, but nonetheless, that was that.

10 Q. Dr. Steinfeld, you did an article -- you
11 wrote an article that appeared in Readers' Digest in
12 November of 1973, the title of which was, Behind the
13 Great Phosphate Flap.

14 And I'd just like to read to you from the
15 first paragraph and then ask you couple of questions
16 about that.

17 MR. KIRBY: Objection, Your Honor.

18 THE COURT: Now, where are we going with
19 that? I think we ought to talk about that.

20 (The following proceedings were had at
21 sidebar:)

22 THE COURT: What's relevant about this?

23 MR. ROSENBLATT: Where I'm going with this,
24 you remember that -- just to pick one witness,
25 Dr. Michael Siegel, for example, was asked questions

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1 along the line of, you're a zealot, you're an
2 antitobacco advocate. You know, you've got the gist.
3 What I intend to demonstrate through this article,

very

4 briefly, is that here he's criticizing a group of
5 environmentalists that he totally disagreed with, so
6 he's not a one-dimensional guy who is --

7 THE COURT: Okay.

8 MR. ROSENBLATT: -- who is the
9 environmentalist is always right and big industry is

10 always wrong.

11 THE COURT: What are you going to read from

12 there?

13 MR. ROSENBLATT: The first paragraph.

14 MR. KIRBY: I'm not familiar with it. May

15 look at it?

16 MR. HEIM: Your Honor, while you're looking

17 at it --

18 THE COURT: I'm reading it.

19 MR. HEIM: Reading it.

20 THE COURT: Okay. Do you want to see it?

21 MR. HEIM: No, because my --

22 THE COURT: Do you want to finish?

23 MR. KIRBY: No. If that's all, I'll wait

24 Bob.

25 MR. HEIM: I wanted to discuss this subject

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1 before Your Honor rules, that the witness talked

2 briefly about the focus of the articles that they had

3 written. And I think it's different to start reading

4 the article.

5 THE COURT: Yes, I agree with you, in this

6 case.

7 MR. KIRBY: That was the basis for my --

8 THE COURT: I think you can get into the

9 opposition or criticism of somebody or the focus of

you

10 this article, that is no problem, but I don't think
11 have to read from it. It says it in nice and concise
12 language, but he'll probably say the same thing.

13 MR. KIRBY: Okay.

14 MR. ROSENBLATT: Okay. Fine.

15 THE COURT: You can ask him about it.

16 (The sidebar conference was concluded, and
17 the following proceedings were held in open court:)

18 BY MR. ROSENBLATT:

of

19 Q. Okay. This article which appeared in the
20 Readers' Digest, November 1973, you were the author
21 it, by Jesse L. Steinfeld, M.D. You were no longer
22 Surgeon General at the time this article appeared.

The

23 title of the article is, Behind the Great Phosphate
24 Flap. And it was a very critical article.

25 Who and what were you criticizing in this

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1 article?

2 A. Well, I was criticizing environmental and
3 legislative extremism.

4 Q. Tell us what specifically. You're talking
5 about phosphates, environment. What was the
6 environmental extremism that you were opposed to with
7 respect to phosphates?

8 A. There was something called eutrophication,

lakes, 9 which means aging of bodies of water, primarily
it's 10 because with running water, it doesn't happen, and
die, 11 a result of having lots and lots of nutrients in the
get 12 body of water, so that algae produce enormously, like
the 13 kind of a blue-green cover, and then as the algae
Lakes. 14 its oxygen again is used up, the little fish do not
 15 enough oxygen and the bigger fish are unable to eat
 16 little fish and fishing disappears in the Great

 17 Somebody decided that phosphates in
it 18 detergents was the main problem. I found out about
the 19 one night, and it's a long story, but in any event,
 20 detergent makers had been pressured to use another
 21 substitute called nitrilotriacetic acid. The
 22 phosphates just enable the detergent to do a better
 23 job.

 24 Nitrilotriacetic acid had not been studied
25 carefully, and some of our scientists found that it

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1 caused defects in animals, potentially carcinogenic,
2 and later I believe was found to be carcinogenic, and
3 so they were kind of pressured to do something else.
4 And some of the Congressmen have plants in

5 their areas that produced other materials than
6 phosphates for detergents, that is caustic materials,
7 lye and other things.

8 And I became upset. I said the problem is
9 not only phosphate, the problem is eutrophication,

and

10 there's a public health problem because little kids
11 cannot be controlled, they cannot read, and if they
12 into the laundry room or under the kitchen sink, they
13 can lose an eye, they can swallow stuff and have
14 esophageal structures.

get

15 And I made the statement that phosphates

were

16 safer. And besides which, it turns out that the

amount

17 of phosphate involved in the eutrophication of the
18 lakes was minor. The major amount of phosphate came
19 from the overuse of fertilizer. Fertilizer had lots

of

20 phosphate in it.

21 The second major source of phosphate in the
22 Great Lakes was human and animal excretive. So what
23 needed to be done was to build better treatment

plants,

24 and in a few areas, perhaps reformulate the

detergents,

25 but to put warning labels on any detergent that could

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1 be harmful to children.

2 Q. So I think the bottom line is that with
3 respect to phosphates specifically, you basically
took
4 the side of the detergent manufacturers against the
5 environmentalists?
6 A. There were multiple -- there were detergent
7 manufacturers who were making non-phosphate
detergents,
8 but they were -- they had problems associated with
it.
9 And I was taking the side of the public health.
Let's
10 take care of the eutrophication problem
appropriately,
11 get rid of most of the phosphates, rather than just
12 aiming at the detergent industry, which would not do
13 it.
14 It was -- my favorite expression, for every
15 complex problem, there is a simple answer, and it's
16 wrong. And the simple answer to eutrophication is
17 detergent phosphates, and it was wrong.
18 Q. Dr. Steinfeld, during your tenure as
Surgeon
19 General, the warning that appeared on packages of
20 cigarettes by congressional legislation said as
21 follows: Warning: The Surgeon General has
determined
22 that cigarette smoking is dangerous to your health.
23 Were you the Surgeon General who made that
24 determination?
25 A. I was the Surgeon General when that warning

1 was put on the pack.

2 Q. And did you agree with the warning?

3 MR. KIRBY: Objection, Your Honor.

4 Preemption.

5 THE COURT: No. That's -- overruled.

6 BY MR. ROSENBLATT:

7 Q. Did you agree with the warning, the Surgeon

8 General has determined that cigarette smoking is

9 dangerous to your health?

10 A. As far as it went. I would have made it

11 stronger.

12 Q. Now, from that -- that warning remained --

13 MR. MOSS: Your Honor, may we approach?

14 THE COURT: Okay. I guess we'll have to

talk

15 about that.

16 THE WITNESS: I'm sorry. I shouldn't

17 volunteer anything?

18 (The following proceedings were had at

19 sidebar:)

20 MR. MOSS: The problem we have is obvious.

21 THE COURT: Yes. I'll have to have it

22 stricken. It did make a reference. The first

23 objection was not. But then --

24 MR. KIRBY: I thought I knew where we were

25 going.

have

1 THE COURT: Well, he didn't necessarily

2 to go there, but he did.

3 MR. MOSS: But I would have guessed it.

4 THE COURT: I'll strike it and instruct the
5 jury to disregard it.

6 MR. ROSENBLATT: Only the comment that he
7 would have gone further.

8 THE COURT: Yes.

9 MR. MOSS: Now, here's the problem, and I
10 understand striking it --

11 THE COURT: Unless you don't want to do it.

is

12 MR. MOSS: No, no, no, sir. What I think

13 this jury needs an instruction on preemption, because
14 otherwise all of this is making no sense to them.

15 THE COURT: Well, that's important.

16 MR. KIRBY: Your Honor, in that regard
17 you've -- we've done this before. I have the portion
18 of the transcript where you gave the curative
19 instruction and you pointed out that the warnings

were

20 governmentally imposed and they are sufficient in and
21 of themselves as warnings to the general public.

22 MR. ROSENBLATT: Well, then, obviously
23 there's no need to repeat that.

24 MR. MOSS: Well, there sure is.

25 THE COURT: Do you recall the date I did

bottom,

1 that? Where in the case?

2 MR. KIRBY: It should be down at the

3 Your Honor.

4 THE COURT: 10/19. What were we doing?

5 MR. ROSENBLATT: That was when I was doing

6 opening.

7 THE COURT: That was during opening?

8 MR. KIRBY: Yes, sir.

9 THE COURT: How did you pull this out so
10 fast?

11 MR. MOSS: I was going to ask the same
12 question.

13 MR. HEIM: Me, too.

14 MR. KIRBY: I have good help.

15 THE COURT: I guess so.

16 Okay. I think that's worded appropriately
17 under the circumstances.

18 MR. ROSENBLATT: But our position is that
19 you've told them that. It becomes --

20 THE COURT: But when I start striking
21 and responses, it's a reminder, and there's no
22 with that.

23 MR. HEIM: Actually, Your Honor, I would --
24 the point that Mr. Moss was saying is that we're
25 telling --

answers

problem

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1 MR. ROSENBLATT: It's break time anyway.

2 THE COURT: Good time for a break.

3 I never had -- what's the word -- the

4 opportunity is not the word I wanted to use, the

5 pleasure of having somebody just whip out something

and

6 give it to me during trial and saying, here's what

7 you're talking about.

8 MR. MOSS: I'm going to bring you

something,

9 too. I'm not as nearly prepared, but I'll bring you

10 something that I was alluding to.

11 That is, we made a motion early on --

12 MR. ROSENBLATT: I haven't heard anything.

13 MR. MOSS: -- and in that motion is a

pretty

14 straightforward preemption definition, and I'm going

to

15 try to find that for you.

16 THE COURT: Not this one.

17 MR. HEIM: What we're talking about here,

18 Judge, is we're spoon-feeding --

19 THE COURT: I know.

20 MR. HEIM: -- a sentence or two.

21 THE COURT: I agree to read this.

22 MR. HEIM: I understand that, Judge. We

23 think that the three or four paragraphs that we

24 proposed to you before explaining to them the issue

of

25 preemption would solve a lot of problems.

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1 THE COURT: You mean as to the dates?

2 MR. HEIM: Right. So then they would know
3 what the issue is here.

4 MR. MOSS: Let me find that for you.

5 THE COURT: Okay.

6 MR. MOSS: Maybe we'll find it. Can you
give
7 me until after the break to find it?

8 THE COURT: Give you time during the break.

9 MR. MOSS: That's what I mean.

10 THE COURT: Okay. Take a break, Doctor.
You
11 must not discuss your testimony with anybody or
anyone.

12 Talk about politics.

13 (The sidebar conference was concluded.)

14 (A recess was taken.)

15 THE COURT: Okay.

16 MR. MOSS: Judge, on the instruction, it's
17 coming -- it will be here -- should be here
18 momentarily.

19 THE COURT: Do you want me to wait, hold
off?

20 MR. MOSS: I think we can. I think -- I
21 think -- yes. And we'll take this up. I think any
22 time would be the -- the timing would be --

23 THE COURT: I'm talking about this
particular

24 one.

until 25 MR. MOSS: I would just assume hold off

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to 1 you can look at the other one, because I don't think
2 you want to do it twice. And I think the other one
3 really does it. But I do think that the jury ought
4 be told the last answer, to disregard the last
answer.

5 THE COURT: Okay. All right.

6 MR. ROSENBLATT: Not the last answer, the
7 last part of the answer that said that Dr. Steinfeld
8 would have gone beyond the warning.

9 THE COURT: Yes.

there. 10 MR. ROSENBLATT: There was no problem

11 THE COURT: The other part of the answer is
12 okay.

13 MR. ROSENBLATT: Yes.

what 14 MR. MOSS: Well, you see what it was is
about 15 did you think about the warning. And his thought

16 the warning --

17 THE COURT: Let me get the answer.

18 MR. MOSS: This is why I knew we were going
19 to get into trouble. The sufficiency of the warning
is

20 determined by Congress.

you
21 THE COURT: Yes. But his question is, do
22 agree with the warning.

23 MR. MOSS: Do you agree with the warning.

24 THE COURT: The Surgeon General has
25 determined that cigarette smoking is dangerous to
your

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And
1 health. There's nothing wrong with that question.

2 he said, "As far as it went." And then he said, "I
3 would have made it stronger."

4 MR. MOSS: But as far as it went also
5 presents the same problem, because we're getting -- I
6 mean, that's what preemption is about.

7 Congress made the determination. The fact
8 that someone agrees or disagrees with it is
irrelevant
9 because of preemption.

10 THE COURT: Yes. Well, I'll tell you what.
11 If he said yes, it would be different.

12 MR. MOSS: Well, if he said yes -- it makes
13 no difference.

14 MR. HEIM: Actually, what he said, Judge,
15 was -- I pulled it up on the screen. The answer was,
16 "As far as it went."

17 THE COURT: Yes. I have it.

18 MR. HEIM: Oh, I'm sorry.

19 THE COURT: That's the issue. I thought he

went." 20 had said yes, but -- but he says, "As far as it

21 And I would agree that that answer --

22 MR. MOSS: That is the problem.

23 THE COURT: -- is the problem. Yes. Okay.

24 MR. MOSS: I would just ask at this time --

25 THE COURT: All right. Strike the last

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1 question and last answer. You can ask the question
2 again, if the answer is yes. If the answer is no or
3 modified, I mean, that's a different story.

4 MR. MOSS: That's the problem, because once
5 the question is asked -- the only --

6 MR. ROSENBLATT: I'll ask it a different
way.

7 I won't ask him if he agrees. I will simply ask him
8 that -- did that -- that warning was on packages of
9 cigarettes throughout your tenure and it remained the
10 warning until 1984, when --

11 THE COURT: A new one.

12 MR. ROSENBLATT: -- Congress mandated the
13 four rotated warnings.

14 THE COURT: That's fine.

15 MR. ROSENBLATT: And I'll get around it.

16 THE COURT: That's fine. Okay. We'll do
17 that.

18 MR. REID: Judge, could I hand up -- I
tried

19 to go through the deposition and make some notes.

20 THE COURT: Yes.

21 MR. REID: I'd like to hand this up if I

22 could. These are the ones I object to. Maybe you've

23 already ruled on them.

24 THE COURT: I haven't ruled on them.

25 MR. REID: What I did was earmark the

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1 objections, the pages where the objections are made.

2 Some as to relevance would not be raised in the

3 deposition. Only form. That's our position. I

4 apologize for my writing.

5 THE COURT: I can read it. My handwriting

6 nobody can read.

7 THE WITNESS: I can't even read my own

8 writing.

9 (Discussion off the record.)

10 THE COURT: Anything?

11 MR. ROSENBLATT: Not as far as I'm

concerned.

12 I'm ready to go.

13 MR. KIRBY: Your Honor, it's my

understanding

14 that plaintiffs' counsel intends to use documents

with

15 this witness, and yet we didn't have any notice of

that

16 fact --

17 THE COURT: Okay.

18 MR. KIRBY: -- in the pretrial scheduling

19 order and all. Certainly not 72 hours but not any at

20 all.

21 MR. ROSENBLATT: How about a year's notice?

22 One of the documents I'm going to use is a document

23 that was used with this witness during the Broin

24 which was -- which was a year ago. And I --

25 MR. MOSS: You know, we --

trial,

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1 MR. ROSENBLATT: You know, the Nixon letter

2 I'm not being allowed to refer to. There's a letter

3 October 23, which I would think that R.J. Reynolds

4 would be very proud of. It sets forth the position

5 the --

of

of

now

6 THE COURT: Okay. So you're telling them

7 which letters are --

8 MR. ROSENBLATT: Well, this --

first

9 THE COURT: I'm not saying this is the

10 time. I'm just saying you're telling them now that

11 these are the documents you are talking about.

12 MR. ROSENBLATT: Correct, that I'm going to

13 use.

14 THE COURT: They are a letter?

15 MR. ROSENBLATT: A letter of October 23,
16 1972, from the president of R.J. Reynolds --
17 THE COURT: Okay. What else?
18 MR. ROSENBLATT: -- to his boss, Elliott
19 Richardson.
20 THE COURT: What else?
21 MR. ROSENBLATT: A document that came up on
22 Dr. Steinfeld's deposition, Survey of Cancer Research
23 with Emphasis upon Possible Carcinogens from Tobacco
24 Claude E. Teague, Junior dated February 2nd, 1953.
25 These are marked --

by

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14312

1 THE COURT: These are in the Broin case?
2 MR. ROSENBLATT: No.
3 THE COURT: Engle?
4 MR. MOSS: No, sir.
5 MR. ROSENBLATT: It's got an Engle
6 Plaintiffs' Exhibit Number.
7 THE COURT: All right. It's in the Engle
8 case.
9 MR. MOSS: The point I think needs to be
10 is that Mr. Rosenblatt suggested that these documents
11 were used -- it's not a surprise because they were
12 with this witness in Broin.
13 THE COURT: Yes.

made

used

14 MR. MOSS: That's not -- you're not
15 suggesting that that document was used with the
doctor
16 in the Broin --
17 MR. ROSENBLATT: No. I didn't say that.
18 MR. MOSS: No, but the Court --
19 MR. ROSENBLATT: I said the letter from
20 Richardson.
21 MR. MOSS: The Court thought that, and so
did
22 I. And that didn't -- I think he's through with the
23 category used in Broin that he says should be no
24 surprise, when he refers to the Richardson depo.
This
25 new document is one which we have not received any

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14313

1 notice of.
2 THE COURT: Which new document are you
3 talking about?
4 MR. MOSS: This one that he's talking about
5 now, the Teague document.
6 THE COURT: You've never seen it except it
7 came up on his deposition?
8 MR. ROSENBLATT: It was used on his
9 deposition.
10 THE COURT: That's what he said.
11 MR. MOSS: But not -- okay. We're
switching
12 from Broin now to the deposition.

13 THE COURT: Yes. Which deposition are we
14 talking about?

15 MR. ROSENBLATT: The Engle deposition.

16 THE COURT: In the Engle deposition. If it
17 came up in Engle, then you're on notice.

18 MR. MOSS: Well, we're on -- we're on
notice

19 that it came up in the Engle depo. If we abandoned
the
20 requirement of the pretrial order, that he tells us
21 what documents he's going to use with a witness. I
22 mean --

23 THE COURT: I see. That's the problem.
24 There's been no follow-up on it.

25 MR. MOSS: Yes, sir. Yes, sir.

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14314

1 MR. KIRBY: Right.

2 THE COURT: What about the follow-up? I
3 mean, just because a document is produced during a
4 deposition, the rule did provide that you were
supposed

5 to let them know by some sort of writing or document
6 that you were going to use it in trial.

7 MR. ROSENBLATT: Judge, I honestly don't
8 know. I'd have to get people from my office who were
9 involved -- I think it was. You know, if it wasn't,
10 we're -- I'm using basically two or three documents,
11 you know, with this witness. This is a document they

-
12 focused in -- I mean, just talk about artificiality -
13 they focused in --
14 THE COURT: Let me tell you what it is.
It's
15 not really artificiality. It's that we started to
try
16 to get a set of rules to work by. And,
unfortunately,
17 one of the rules was there was supposed to be notice
18 sometime to the defense exactly what documents you
were
19 going to use with what witness so they could be
20 prepared. That seems only to be reasonable.
21 The problem is, since a witness has been
22 talked to before, has been deposed before in another
23 case, and the same document was being used then,
24 they're saying, well, that's fine, all well and good,
25 but the rules do provide you give us a list of those

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14315

1 documents for this case so we would know whether
you're
2 abandoning that approach or not and so forth and so
on.
3 I think that's rather reasonable.
4 Then the big question now is whether or
not,
5 because you didn't comply with the first rule of
6 notification --
7 MR. ROSENBLATT: I may have.

Should

the

position

to

at

8 THE COURT: -- in writing --
9 MR. ROSENBLATT: Really may have.
10 THE COURT: But they say you haven't.
11 those documents then be prohibited. And so that all
12 boils down to prejudice. That's where we're at.
13 Prejudice is a judicial determination.
14 MR. ROSENBLATT: And our position, Judge,
15 obviously there's no prejudice. They focused in on
16 Nixon letter and they knew from the Broin trial that,
17 since you wouldn't let me get the Nixon letter in or
18 let Dr. Steinfeld talk about it, my fall-back
19 was the letters again from the president of Reynolds
20 the Secretary of Health, Education and Welfare, and
21 there's one other letter that was also gone into from
22 the secretary to Mr. Pepples, and Mr. Pepples'
23 response --
24 THE COURT: I think I'd better take a look
25 at it.

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14316

1 MR. ROSENBLATT: We're talking about two
2 letters. They came in on the Broin case.
3 THE COURT: Let's not talk about Broin.
4 MR. ROSENBLATT: I'm just dating it. I've
5 learned -- I'm certainly not saying to you -- I

way, 6 wouldn't say to you that, you know, you ruled that

7 you have to rule this way.

8 THE COURT: Let me see what we've got here.

9 MR. KIRBY: Your Honor, I think counsel

have 10 inadvertently misspoke. My recollection is it may

11 been identified in Broin. My -- I do not have a

12 recollection that they were admitted.

13 THE COURT: I don't care if they were or

they 14 weren't.

15 MR. KIRBY: All we were asking for was just

16 some fair notice under the rule, even a day's notice.

17 MR. HEIM: Those are the two, Judge.

18 Basically these are the ones.

19 (The following proceedings were had at

20 sidebar:)

21 MR. KIRBY: I would point out as well, Your

22 Honor, and I don't think we ought to have to get to

23 this level because of the notice requirement in the

24 pretrial scheduling order that neither of these

letters 25 had been properly identified or authenticated. There

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14317

1 is no Reynolds production number on this October 23

2 letter. We didn't produce the document.

3 THE COURT: Save that for a minute.

4 What we ought to do is voir dire on this

5 outside the presence of the jury to see where we're
6 going to go with it. Okay.

7 (The sidebar conference was concluded, and
8 the following proceedings were held in open court:)

9 MR. ROSENBLATT: Voir dire.

10 VOIR DIRE EXAMINATION

11 BY MR. ROSENBLATT:

Surgeon

12 Q. Dr. Steinfeld, during your tenure of

13 General of the United States --

14 THE COURT: This is voir dire outside the
15 presence of the jury. The purpose is to go over an
16 issue the Court is going to determine should be or
17 shouldn't be admissible. If it's admissible, we're
18 going to hear it. If it isn't, we won't do it again.

19 THE WITNESS: Okay.

20 BY MR. ROSENBLATT:

Surgeon

21 Q. Dr. Steinfeld, during your tenure as

22 General of the United States, who was your immediate
23 superior?

24 A. I had several.

25 Q. Well, I'm -- let me lead you --

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14318

1 A. The Assistant Secretary for Health and
2 Scientific Affairs.

3 Q. I want to know who was the boss?

4 A. Well, the secretary was the ultimate boss.

5 Q. And who was that?

6 A. Well, it was first Robert H. Finch, may he
7 rest in peace, and then it was Elliott Richardson.

8 Q. I'm focusing in on Elliott Richardson.

9 A. Elliott Richardson.

10 Q. The way it worked, if Mr. Richardson -- if
11 Secretary Richardson had received a letter from any
12 tobacco company, from an executive of a tobacco
13 company, would he have made you aware of such a

letter?

14 MR. KIRBY: Your Honor, could we not lead
15 during this? This is very important.

16 THE COURT: I'm not so sure that's leading.

17 MR. KIRBY: I thought it was, but it turned
18 out I was wrong.

19 THE COURT: Well, I mean, the definition of

a

20 leading question is one in which the answer is

offered.

21 MR. KIRBY: Suggested.

22 THE COURT: Or suggested. And did you or
23 would he have, and the answer could be either yes or
24 no, so that's not a suggested answer. Leading is:

He

25 would have done this, wouldn't he? That's leading.

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14319

1 Okay.

2 MR. MOSS: My objection to that question is

to

3 that this witness, or any witness, is not competent

4 testify as to what somebody else would have done.

5 THE COURT: No. The question is what the
6 procedure was.

all

7 MR. MOSS: That wasn't the question, with
8 due respect.

9 THE COURT: That's what --

Your

10 MR. MOSS: With all due respect, unless

11 Honor is suggesting --

12 THE COURT: That's just a preparatory
13 question to the next one that is, did you do this in
14 this case, has he shown it to you before, blah, blah,
15 blah.

16 We're sort of anticipating here. We're
17 outside the presence of the jury. I'm just trying to
18 get the nuts and bolts.

19 Okay.

direct.

20 MR. ROSENBLATT: Let me just get very

21 BY MR. ROSENBLATT:

S.

22 Q. I'm going to show you a letter from David
23 Pepples, the president of R.J. Reynolds, to the
24 Honorable Elliott L. Richardson, dated October 23,
25 1972, and ask you if Mr. Richardson showed you this

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1 letter.

2 A. I can't tell, because it does not have the
3 back-up. There is a procedure or was a procedure for
4 handling mail, and the procedure was that it went to
5 something called the executive secretariat, which

were

6 a number of bright people who would read a letter and
7 send it into the bowels of the agency, to the
8 appropriate person to prepare a draft answer. And

then

9 it would come up through channels, either initialed

by

10 two or three people, or modified along with the first
11 draft. And frequently, there would be two or three
12 drafts.

13 Richardson liked to have option -- several
14 options when we were drafting things for him. But

that

15 was the procedure. And I don't want to be facetious,
16 Judge, but it is hilarious. At times I had mail from
17 relatives with proposed answers. I never saw the

mail

18 until the -- it came up with the answers.

19 So that was the procedure. So this one
20 doesn't have any back-up, so I can't tell whether I

had

21 seen it or not.

22 THE COURT: All right.

23 THE WITNESS: If it had the back-up, I

could

24 tell.

25 THE COURT: All right.

14321

1 THE WITNESS: Are you with me?

2 BY MR. ROSENBLATT:

3 Q. Does the contents of that letter --

4 A. Oh, I've seen it many times.

5 Q. That's my question. That's my question.

6 Have you seen this letter?

7 A. Yes, I've seen the letter.

8 Q. Okay.

9 A. Oh, I thought you meant did I do a draft of
10 it. I'm sorry. I've seen the letter before.

question

11 MR. KIRBY: Your Honor, in fact, the
12 was not whether he'd seen the letter.

13 THE COURT: I know.

14 MR. KIRBY: The question was did
15 Mr. Richardson show you.

16 THE COURT: I know all that. And he was
17 focused in on the procedure, and the question -- the
18 ultimate question is have you ever seen this letter
19 before and, if so, under what circumstances.

20 BY MR. ROSENBLATT:

practical

21 Q. I'm sorry. I was asking you a very
22 common sense everyday question. Have you seen that
23 letter before?

24 A. I have seen the letter before.

25 Q. Okay. You seem to be anticipating

14322

1 objections, you know, Dr. Steinfeld. Focus in on the
2 substance -- don't worry.

3 A. Okay.

4 Q. Don't play lawyer here.

5 You've seen the letter.

6 A. I've seen --

7 Q. Did you see it -- did you see it back then?

8 A. I do not remember, because I can't -- I

9 don't -- I do not remember when I had seen it.

10 Q. You were Surgeon General of the United

11 States -- I'm trying to find out if Elliott

Richardson

12 or somebody showed you this letter.

13 A. Elliott Richardson would not show me the

14 letter. It would come through the mail.

15 THE COURT: All right. I think the essence

16 of this thing is that, during your tenure and at the

17 time that the letter was written, these days

18 surrounding that period, were you aware of the letter

19 and its contents?

20 THE WITNESS: Yes.

21 THE COURT: And did you act on it or take

any

22 action thereto?

23 THE WITNESS: Yes. It is a letter that I

24 probably prepared a draft answer for.

25 THE COURT: Okay. But you can't remember?

14323

1 THE WITNESS: I can't. I don't have the
2 draft answer.

3 THE COURT: Yes?

4 MR. KIRBY: Your Honor, in fairness, he was
5 just asked by plaintiffs' counsel: Did you see it --
6 did you see it back then?

7 THE COURT: I know.

8 MR. KIRBY: His answer: I do not remember.

9 THE COURT: I know. I just asked him the
10 same question, and he says he did. Now we have a
11 little bit of a problem here as to if we can narrow
12 down.

13 My question to you is, at the time that you
14 were the Surgeon General, the date is on the letter,
15 know that --

16 THE WITNESS: Yes.

17 THE COURT: -- so we're talking about a few
18 days or soon after the letter was written or
19 thereabouts; in other words, in the official duties
20 that you were performing at that time, did you become
21 aware of the contents of the letter and take official
22 action?

23 THE WITNESS: The answer is yes, I did.

24 THE COURT: Okay. Now, what's the thrust
25 the next question?

14324

1 BY MR. ROSENBLATT:

2 Q. The next question is, did you -- were you
3 aware, for example, in that letter, Dr. Steinfeld,
4 Mr. Pepples refers to the secretary's letter of
5 28th, commenting upon my earlier letter.

August

6 Back then, during that time frame when you
7 were Surgeon General of the United States, were you,
in

8 fact, made aware of these letters, Elliott

Richardson's

9 letter to him of August 28th, and Pepples' letter to
10 President Nixon?

11 THE WITNESS: The answer is yes, I was.

12 THE COURT: That's all you want to do with
13 the letter?

14 MR. ROSENBLATT: Well, no. Then I -- then

I

15 intend to ask him certain questions about the

contents

16 of the letter and establish that pressure was being
17 put -- I mean, what the -- I want to offer the letter
18 in evidence. And the letter will speak for itself,

if

19 Your Honor allows it in evidence.

20 My purpose is --

21 MR. MOSS: Your Honor, hold on. Just

excuse

22 me for one moment. If we're going to do this, we

need

23 to excuse the witness.
24 THE COURT: Excuse the witness.
25 MR. ROSENBLATT: Fine.

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14325

1 THE WITNESS: All right.
2 THE COURT: If you don't mind.
3 THE WITNESS: No, no. Should I go?
4 THE COURT: Yes, sir.
5 (The witness exited the courtroom.)
6 MR. ROSENBLATT: He's complaining -- this
7 letter complains about actions taken by the Surgeon
8 Generals and the department. This Surgeon General
9 mentions Steinfeld specifically, and the department,
10 vis-a-vis tobacco and health.
11 And I don't understand why they're
12 It sets forth the position of the tobacco companies
13 to why the government is being very unfair toward
14 And, obviously, when I get to the area
15 he left the office of Surgeon General, and he does
16 know -- he cannot say that no one told him that as a
17 result of this letter, Pepples' or R.J. Reynolds got
18 him fired. And I'm simply going to say, you know,
19 left before your term was up, and what was the
20 circumstances of your leaving?

objecting.

as

them.

where

not

you

unhappiness

21 He's not going to say that anyone told him
22 that, as a result of the tobacco industry's
23 with him, you know, he was being pressured to leave.
24 But I think it's a fair inference.
25 MR. MOSS: What is he going to say in

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14326

presence

1 response to that?
2 MR. ROSENBLATT: You never know with him.
3 MR. MOSS: Well, that's the point. That's
4 exactly the point.
5 THE COURT: Well.
6 MR. MOSS: And we --
7 THE COURT: Let's put it this way. You ask
8 him that question without reference to the letters.
9 We'd like to know what the answer is.
10 MR. ROSENBLATT: Okay. Outside the
11 of the jury. Fine.
12 THE COURT: I mean now. And then you're
13 going to ask him the question: What were the
14 circumstances of your leaving?
15 If he says, I got another job or they asked
16 me to change my opinion about something I didn't want
17 to do, or whatever it might be, whatever it might be,
18 if he doesn't mention the letter.
19 Now if he says, on the other hand, well, it

20 was my understanding that the tobacco companies put
21 pressure on the President and then the secretary to
get
22 rid of me, then we have to deal with that. I don't
23 know what he's going to say.
24 MR. MOSS: Well, the question itself calls
25 for hearsay.

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14327

1 THE COURT: Well, there may be other
things,
2 other than hearsay. And we don't know the answer to
3 the question.
4 MR. MOSS: I guess we have to find out.
5 THE COURT: We have to find out.
6 So let's bring him back and ask that
7 question. We may have to shuffle him back and forth,
8 in and out.

9 (The witness entered the courtroom.)

10 BY MR. ROSENBLATT:

11 Q. Dr. Steinfeld, did you leave your position
as
12 Surgeon General of the United States before your
13 official term had expired?

14 A. Yes.

15 Q. What were the circumstances of your leaving
16 early?

17 A. On the day after the election -- re-
election

18 of President Nixon, he called a meeting of all of his

to

19 senior staff and asked for their resignation. And I
20 was in an airport in Los Angeles, and I was paged,
21 talked to my secretary. She told me I was supposed
22 be at a one o'clock meeting, in a half an hour, and I
23 obviously couldn't make it.
24 And she said: I can tell you what it's
25 about. They want their resignation. They asked for

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14328

didn't

listed

beginning

keep

1 everybody's except, I think, the Secretary of State.
2 Q. So they asked for your resignation, and you
3 gave it, and it was accepted?
4 A. It was a little more complicated.
5 Q. Well, that's what I want to know.
6 A. Yes. I had a term appointment, which
7 expire. Most of the political appointments were
8 at the pleasure of the President and for the time
9 being. Mine said for a period of four years,
10 on such and such a date.
11 And I'm afraid I have to give a little
12 background. I had spent several months trying to
13 the Public Health Service Commission Corps alive.
14 There was a report called the Perkins report which
15 recommended doing away with it and only have civil
16 servants in the department, the FDA, the NIH and CDC,

17 et cetera.

18 And I had written letters to all the
19 Commission officers, got responses from many, many,
20 several thousand, and I wrote I think an 18-page memo
21 to Elliott. And I will say to his credit, he called
22 in and said he read it and said he changed his mind,
23 was going to keep it, preserve it.

24 At that point, I felt that I had completed
25 duties and I was perfectly happy. So I sent a letter

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1 of resignation thanking the President for the
2 opportunity of serving the country. I thought it was
3 very nice letter.

4 I got it back, and was told that that's not
5 what we want. We want a letter that says, in
6 accordance with the usual custom at the reelection of
7 the President, I am submitting my resignation. Okay.
8 So I sent a second letter, and I got that back.

9 I don't think -- in writing, the chief
10 personnel came, and said, no, we want a letter
11 explaining -- giving a reason. And I said the reason
12 is I'm being asked to resign. And I never gave a
13 reason.

14 However, my resignation was posted on a

late

of
there
you

15 Saturday afternoon when they -- along with a number
16 others. So -- and I didn't sign a third one, if
17 is a third one. But that's how it went.
18 Q. Well, if you had decided to be stubborn --
19 and you may not know the answer to this, but since
20 had a term appointment, if you had said, I'm not
21 submitting any letter of resignation, I'm serving out
22 my term, was it your understanding they had the power
23 legally to fire you anyway?
24 A. Oh, no. No. The head of personnel said --
25 MR. KIRBY: Objection, Your Honor.

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14330

because
the
Alaska.
Obviously
April

1 I'm sorry. There's no jury. It's habit.
2 THE COURT: I want to hear the answer
3 we're in a voir dire situation.
4 A. He said: Jesse -- he's a good friend --
5 White House wants your -- you know, wants you to go.
6 They said they'll send you to Alaska.
7 I said: Well, I don't want to go to
8 But I didn't give a reason anyway.
9 I didn't finish the term. I think I ended up in
10 when the -- you know, using up vacation and that sort
11 of thing, leaving in April, '73.

Nixon

12 Q. Putting aside the formalities and putting
13 aside the politics of it, after the reelection of
14 in 1972, was it your intention to remain as Surgeon
15 General of the United States until the end of your
16 term?

was

17 A. I'm trying to think of this. I was
18 ambivalent, I must say. It really depended on who
19 there. And I'll have to expand on that a little bit.

a

20 The President felt that the bureaucracy had
21 captured his political appointees, and he had set up
22 new form for the government with four super-cabinets,
23 officers, to whom all of the others reported.

24 Along this same time, he provided uniforms,
25 very gaudy uniforms, like the little colonel. It

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14331

1 didn't go over well with the President.

was

2 My problem was I didn't know who I would be
3 reporting to, and so I was very ambivalent. If it
4 somebody, you know, that was -- I couldn't stand, I
5 wanted to leave. If it was a good friend, I would
6 stay.

what

7 Richardson, for example, was transferred to
8 Defense. He had spent several months planning on
9 he was going to do, because it was a sure thing that

did

10 Nixon would be reelected. So, you know, I can't -- I
11 would just say I was ambivalent, but my ambivalence
12 disappear with, you know, with events.

13 Q. The only reason you submitted your
14 resignation at the time you did is because you were
15 asked to submit your resignation?

16 A. That's correct. Yes.

17 Q. In your own mind, did you, as a practical
18 matter, think you were being fired?

19 A. Well, yes. I would say so.

20 Q. Did you know the reason why?

21 A. No.

22 THE COURT: Well --

23 MR. MOSS: Can we go sidebar?

24 THE COURT: Let's talk about this.

25 THE WITNESS: Shall I?

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14332

if

1 THE COURT: Yes. Why don't you step out,
2 you don't mind. It's good exercise.

3 THE WITNESS: It is.

4 THE COURT: Keeps the heart going.

5 MR. MOSS: We don't have to go sidebar.

6 (The witness exited the courtroom.)

hearing

7 MR. MOSS: I guess my point is, after
8 all this, it has nothing to do with anything.

hearing

9 THE COURT: I agree with you. After

10 his answers, it doesn't really relate to the answers.

11 It's too much speculation and supposition as to what

12 the letters mean, if anything, vis-a-vis this. He

as

13 wasn't aware of it. He didn't make reference to it

14 being an answer.

you

15 I think it was a political move, however

as

16 want to interpret it. I think his answer will stand

of

17 far as the Court's concerned as to the circumstances

18 his leaving, without any reference to --

19 MR. ROSENBLATT: The letters are totally

20 independent of that, Judge, from our standpoint. The

21 letters are what they are.

22 THE COURT: I know.

23 MR. ROSENBLATT: But if you're --

24 THE COURT: Getting the letters in through

25 him is a different story. That's a problem.

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14333

1 MR. MOSS: Correct.

2 THE COURT: Okay.

3 MR. ROSENBLATT: He saw the -- he saw the

went

4 letters. The letters talk about him. The letters

5 to his boss.

6 I -- you know, I won't ask him questions
7 along the line of -- or I won't ask him any questions
8 about the circumstances of him leaving. But it would
9 seem to me that the letters --

10 MR. HEIM: They would have --

11 THE COURT: It doesn't have any relevance.

12 MR. ROSENBLATT: He testified about the
13 letters, Judge, in the secondhand smoke case.

14 THE COURT: I don't care about that.

15 MR. MOSS: Your Honor --

16 MR. ROSENBLATT: But I --

17 MR. MOSS: I'm sorry.

18 MR. ROSENBLATT: I think we're really
19 carrying this to an extreme where you almost want to
do the opposite.

21 THE COURT: I may --

22 MR. ROSENBLATT: But there's a logic to
what you did in Broin.

24 THE COURT: I may very well feel that way.

I
25 may very well feel that way.

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1 MR. MOSS: Judge, I think nothing better
2 makes our argument than the last narrative answer by
3 the witness. And just we're not dealing with
anything
4 that's relevant here.

5 MR. ROSENBLATT: The letters are absolutely
6 relevant in terms of what this case is all about,
7 Judge.

8 MR. MOSS: Not through this witness.

9 THE COURT: It doesn't really prove
anything
10 until Richardson comes in and tells it, and that's
11 where the problem is.

12 MR. MOSS: That's the point.

13 THE COURT: In other words, one could say,
14 the boss received an excoriating letter from a
15 disgruntled whoever about the activities of an
16 underling, and then it just so happened that that
17 underling was fired for whatever reason, political or
18 otherwise, that had nothing to do with that letter.

19 Well, okay. Now, the letter may in and of
20 itself may be very damning, but it may be meaningless
21 as relates to the events that occurred. We won't
know

22 that unless we have that determination made by the
23 person who had the ultimate authority to do the
firing.

24 So for him to sit here and say, well, I was
25 let go because of political reasons, whatever it may

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1 be, oh, by the way there was this letter that
2 excoriated me, well, you can draw your own
conclusions,

understanding

problem

frankly,

nothing

going

3 I don't think that's appropriate in a court of law.

4 That's where the problem comes in.

5 MR. ROSENBLATT: I don't think it's a

6 problem, if I understand, because as I'm

7 your ruling, Judge, I think the solution to the

8 is, I do not connect the letter to him leaving.

9 THE COURT: He can testify to everything he
10 said here.

11 MR. ROSENBLATT: Pardon me?

12 THE COURT: He can testify to everything he
13 said here. I'm not worried about that, but it's the
14 connection to the letter I'm worried about.

15 MR. ROSENBLATT: No. If I -- quite

16 Judge, if I have to choose between the letter, the
17 letter is what it is.

18 THE COURT: I know. But it may have
19 at all to do with his situation.

20 MR. ROSENBLATT: With him getting fired.

21 THE COURT: Right.

22 MR. ROSENBLATT: That's fine. I'm not
23 to make the connect.

24 THE COURT: Okay.

25 MR. ROSENBLATT: I'm not going to make the

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1 connect.

2 THE COURT: So the next point is what
3 about --

4 MR. ROSENBLATT: The letter should --

5 THE COURT: -- then getting the letter in
6 through its proper procedure, for whatever value it
may
7 have for evidence.

8 MR. ROSENBLATT: Well, I would think this
9 letter -- this letter can come in on a Friday. It's
10 their stationery. They don't question that this is
11 Pepples. This lays out the position in terms of --
in

12 terms of the guts of this case, Judge, in terms of
what
13 the -- what they're saying is cause, not proven. You
14 people are not looking at the proper --

15 MR. HEIM: That's not how he intends to use
16 it here.

17 THE COURT: I understand.

18 MR. ROSENBLATT: It is.

19 THE COURT: I understand.

20 MR. ROSENBLATT: It is.

21 THE COURT: Here's what I want you to do if
22 you're not going to get into the content of the
letter

23 with him. You mark it for identification purposes
and

24 let him identify as having seen it now or about the
25 time it was written, and he was aware of its content
at

least

that

he

anybody

said,

1 that time, that's fine. I have no problem with that.

2 We don't get into the contents, but at

3 you've established that this was a letter that he did

4 see and so forth, which is in preparation for any

5 introduction into evidence of that letter through any

6 other source for any other reason. Okay.

7 And talk to him about why he was fired and

8 all, but not connection with the letter and being

9 fired. One doesn't necessarily have anything to do

10 with the other.

11 MR. KIRBY: Your Honor, may I be heard for

12 just a moment --

13 THE COURT: Yes.

14 MR. KIRBY: -- with respect to what it is

15 that plaintiffs' counsel would like to do?

16 The witness just testified on voir dire

17 during the period of time before the election in

18 November, he was, quote, trying to keep the Public

19 Health Service alive, and he testified to his

20 ambivalence in staying on and told us candidly that

21 sent his letter of resignation. This is before

22 ever supposedly fired him. He resigned.

23 And then they came along and wanted some

24 letter written in the usual custom, because as he

25 the President felt the bureaucracy had captured his

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1 political appointees and asked for the resignation of
2 everyone.

3 THE COURT: Yes.

4 MR. KIRBY: Now -- and he says he doesn't
5 know why he was fired.

6 Now, what the plaintiffs want to do -- they
7 may not want to do it with this witness, but I
promise

8 you that's what they want to do in closing, they want
9 to say, look at this letter where Pepples supposedly
10 wrote to Elliott Richardson complaining about the
11 Surgeon General, and then move and say, the Surgeon
12 General, you heard him testify, had a term and he
13 didn't complete his term --

14 THE COURT: Look, I can't --

15 MR. KIRBY: -- and argue the evidence --

16 THE COURT: I can't really make the
decision

17 or ruling upon the connection that a jury may make
18 between Exhibit 1 and Exhibit 2, okay, and that's
19 basically what you're talking about. That's their
20 interpretation of that.

21 Now, we have a situation like this where he
22 has said that he doesn't know anything about the
letter

23 as to the response. So be it. If the jury wants to
24 make that connection, that's their prerogative.

25 MR. KIRBY: May I voir dire the witness,
too,

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1 Your Honor?

2 THE COURT: On what?

3 MR. KIRBY: With respect to this letter.

4 THE COURT: Yes. I suppose you can. He's
5 not going to use the letter other than --

6 MR. ROSENBLATT: Other than --

7 THE COURT: -- acknowledging that he saw
it.

8 MR. ROSENBLATT: Not to discuss the
contents.

9 MR. KIRBY: That's what I would like to ask
10 him about.

11 THE COURT: The contents?

12 MR. KIRBY: No, no. The letter, the
13 circumstances under which he thinks now, some 26
years

14 later, he has a recollection he saw it while he was
15 Surgeon General.

16 THE COURT: Oh. Well, I guess you're
17 entitled to that. Sure.

18 Okay. Bring him out.

19 MR. ROSENBLATT: Although I would say for
the
20 record, before the witness comes in, obviously this
was

21 very vivid in his mind.

22 THE COURT: I don't know. We'll find out
23 what he says. You can argue that later.

24 All right. Bring him in.
25 (The witness entered the courtroom.)

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1 THE COURT: You'll get used to this
2 in-and-out business.

3 THE WITNESS: I hope not.

4 THE COURT: Counsel would like to ask some
5 questions of you. It's a gray and narrow issue here.

6 THE WITNESS: I understand.

7 VOIR DIRE EXAMINATION

8 BY MR. KIRBY:

9 Q. Good morning, Dr. Steinfeld.

10 A. Good morning.

11 Q. My name is Rick Kirby, and I represent the
12 R.J. Reynolds Tobacco Company.

13 Mr. Rosenblatt was asking you some
questions

14 about this October 23rd, 1972 letter --

15 A. Uh-huh.

16 Q. -- just a few moments ago. Do you recall
17 that?

18 A. Yes.

19 Q. You said in response to a question from
20 Mr. Rosenblatt as to whether you had seen this letter
21 before, you answered at one time, you can't tell.

And

22 then, as I understand it, in response to a question
23 from the Court, you answered that at some time you

24 became aware of the contents of the letter while you
25 were Surgeon General of the United States.

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1 A. I'm not sure I answered it that way. I may
2 have misinterpreted his question.

3 And my answer, I tried to explain the
4 sequence and that, in the normal course of events, I
5 should have seen it on its way up, and there should
6 be -- there should be back-up of preparation.

7 Q. I agree with you. And there's none, is
8 there?

9 A. Not on that one, no. That's why I
hesitated.

10 Q. And from looking at this letter, there is
11 nothing --

12 MR. KIRBY: May I, Your Honor?

13 THE COURT: Yes. Sure.

14 BY MR. KIRBY:

15 Q. -- there is nothing --

16 THE COURT: Basically I think what we want
to

17 know -- what the Court wants to know is are you
18 familiar with the contents, and if so, can you recall
19 when you first became familiar with the contents of
20 that letter?

21 MR. KIRBY: May I?

22 THE COURT: I'm not talking about a
specific

23 day, but the general time frame.

24 BY MR. KIRBY:

25 Q. For example, Dr. Steinfeld --

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1 MR. ROSENBLATT: Let him answer the Judge's
2 question.

3 BY MR. KIRBY:

4 Q. -- is there anything on that letter at all
5 that indicates to you, in all honesty, that you saw
6 while you were Surgeon General of the United States?

7 A. No. That's -- there is nothing --

8 THE COURT: I'm not concerned -- I really
9 not concerned with having any procedural marks, edits
10 or addendums attached to the letter. That doesn't
11 concern me.

12 MR. KIRBY: I'm going to the next question.

13 THE COURT: What concerns me is when did
14 first see the letter and what causes you to remember
15 that?

16 THE WITNESS: I think it was part of a
17 of letters. I was familiar with all of them and,
18 generally, Elliott took a much stronger position than
19 the milder letters which Dan Horn and I wrote for
him.

20 BY MR. KIRBY:

it

am

you

series

him.

21 Q. You've never seen any of what you
22 characterized a minute ago as the internal things
that
23 would have been associated with this letter had you
had
24 some role in them?

25 A. I can't answer that.

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1 Q. Let me try it another way. This letter
2 reports to be dated in October of 1972, and we all
3 appreciate the fact that was a long, long time ago.

4 Let me ask you this: In fairness to the
5 plaintiffs, in fairness to the defendants and,
indeed,

6 in fairness to the Court, can you honestly tell me
7 under oath that you know that you saw this letter
while

8 you were Surgeon General of the United States?

9 A. It doesn't have the back-up. What it is is
a
10 letter I am familiar with, and I believe that I had
11 prepared an earlier draft for it, but as we are both
12 agreeing, the back-up is not there.

13 THE COURT: May I see which letter you're
14 talking about? Because there were two letters made
15 reference to. There's only one here.

16 (Document produced.)

17 This is a letter from -- this is a letter
to

18 the secretary. Okay. And you say you prepared a
19 draft. Are you talking about an answer to this
letter?

20 THE WITNESS: Yes. Yes.

21 THE COURT: Forgetting the answer, I'm
22 talking about the content. Obviously the content of
23 this letter is somewhat critical of you as Surgeon
24 General --

25 THE WITNESS: Yes.

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was
1 THE COURT: -- so I wanted to know if it
2 critical of you, does that trigger anything in your
3 memory as to when you became aware of the content of
4 this letter, or is that something you learned after
you
5 left the office?

6 THE WITNESS: Well, Your Honor, what -- I
7 say --

8 THE COURT: I know it doesn't have any
9 back-up. I just want to know if it triggers
something.

10 THE WITNESS: Yes. It triggers the fact
that

11 I said something -- I forget what Dan did, but I said
12 he-was-only-doing-his-job kind of thing, for him to
13 sign.

14 THE COURT: Dan being --

15 THE WITNESS: Dan Horn, who worked for me
in

Richardson

16 the Clearinghouse.

17 The letter I remember writing for

18 was nothing like this. It was short and it said --

19 much shorter, and it had one option, was to meet --

20 THE COURT: That's in response to this

21 letter?

22 THE WITNESS: Yes. And another said, you

23 know, Steinfeld is doing his job.

24 Richardson writes a much stronger letter

25 stating that what the -- I think --

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1 THE COURT: Do you remember the Richardson

2 response?

3 THE WITNESS: Yes.

4 THE COURT: Okay. Do we have that one?

5 MR. ROSENBLATT: I believe so, Your Honor.

6 THE COURT: Let me see this one.

7 Okay. Here it is.

8 Let me show you this one. 1896, just for

the

9 record, where are we? We never did put this in as

far

10 as a number. The October 23rd, 1972, RJR letter is

11 1894. And the November -- boy, I can't really get a

12 date on that -- 9th, I guess, but it looks like it's

13 probably more than that.

14 THE WITNESS: We were in the --

15 THE COURT: 1972. I'll give you that. It
16 was 1896.
17 Now, look at that one and let me know if
that
18 letter is allegedly the one you're making reference
to
19 in response to the Richardson letter.
20 Is that something different?
21 MR. KIRBY: No. I borrowed Mr.
Rosenblatt's
22 copy.
23 THE COURT: Same letter?
24 MR. KIRBY: 1896.
25 THE COURT: I don't know if that's --

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1 THE WITNESS: Yes. This we prepared a
2 response -- a much milder response.
3 THE COURT: I'm confused with your answer.
4 The one that -- this response letter, did you prepare
5 it or have it caused to be prepared?
6 THE WITNESS: I had it caused to be
prepared,
7 and it came through me.
8 THE COURT: Okay.
9 THE WITNESS: We gave him several, and he
10 wrote --
11 THE COURT: The letter there --
12 THE WITNESS: I mean, this letter is much

13 stronger.
14 THE COURT: Let me see. We're getting
15 confused.
16 THE WITNESS: This letter came down to us.
17 THE COURT: Just --
18 MR. KIRBY: For the record --
19 THE COURT: Just, please, sir, just one
20 second.
21 The letter, which is marked 1984, is a
22 to the secretary --
23 THE WITNESS: Yes.
24 THE COURT: -- from Mr. Pepples. Okay.
25 THE WITNESS: Correct.

letter

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1 THE COURT: Now, that's a letter that we're
2 talking about that required some sort of a response?
3 THE WITNESS: Yes, sir.
4 THE COURT: The letter in response to the
5 Pepples letter is 1896. The response letter that was
6 sent out to Mr. Pepples, in response to his letter to
7 the secretary.
8 THE WITNESS: Yes. We prepared draft --
9 THE COURT: And who prepared that?
10 THE WITNESS: I doesn't know who prepared
11 THE COURT: Not this one. I'm talking

it.

about

12 the one you're holding in your hands.

13 THE WITNESS: We did.

14 THE COURT: We being you and your staff?

not

15 THE WITNESS: We prepared earlier drafts,

16 this strong. He wrote a much stronger -- a strong

17 letter.

18 THE COURT: That's the one that you

19 recognized you wrote?

20 THE WITNESS: Yes. We would -- we couldn't

21 respond if we didn't have this.

trying

22 THE COURT: I understand. So what I'm

23 to say and what's important to me is that, while you

24 were in your office, in tenure at your office, and

25 doing the duties, the official duties of the Surgeon

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Pepples

1 General, you had seen the letter written by Mr.

2 to the secretary, and had caused to be drafted a

the

3 response to the letter which was later modified by

4 secretary and sent out; is that what you're saying?

actually

5 THE WITNESS: Not only had caused, I

6 did a response.

7 THE COURT: But not that response.

8 THE WITNESS: Not that response. Not this

9 one.

10 THE COURT: Okay. You could not have

11 responded to letter had you never seen?

12 THE WITNESS: No. No, sir.

13 THE COURT: Okay. Thank you.

14 BY MR. KIRBY:

15 Q. Doctor --

16 A. Yes.

17 Q. -- the letter of November -- I guess it's

18 19 --

19 THE COURT: I can't really get the date on

20 that either. It's so blurred.

21 BY MR. KIRBY:

22 Q. -- 19th or something, 1972, it's the one

that

23 has the Exhibit Number 1896 on the bottom.

24 A. 1896, yes.

25 Q. It's my understanding you did not prepare

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1 that letter. Do you know who did?

2 A. Actually -- the secretary who did it

himself

3 or one of his immediate staff. Actually, I think in

4 the earlier trial, you have all of the back-up stuff

5 with -- it may be in the deposition. I think there's

6 some of the back-up letters there.

7 Q. I was just -- I noticed initials and names

on

8 here that I didn't recognize, and I was simply asking

9 you since you had just told us you didn't prepare the
10 response --

11 A. I prepared a response. Not this one.

12 Q. Yes, sir. I was asking you if you knew who
13 prepared the response that is Plaintiffs' Exhibit
14 Number 1896.

15 A. It looks to me like it's the executive
16 secretariat, E.S., office of the secretary, well, I
17 don't -- it's E.S. Health. And Ray Cotton, he worked
18 for the secretary, may have prepared it.

19 Q. Okay. Now, here's what I want to find out.

20 Given the fact that you did not prepare
this
21 response and somebody who worked in the secretary's
22 office did -- are you with me?

23 A. Yes.

24 Q. I want to ask you the same question that I
25 asked you a minute ago. And that is, can you tell
us,

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1 the plaintiffs, defendants, the Court, that you
2 actually know that, back in the fall of 1972, you saw
3 that October 23rd letter?

4 A. Yes, because I prepared a response to it.

5 THE COURT: I thought we established that.

6 Okay.

7 Thank you.

8 Do you want to mark these for plaintiffs'

for

9 I.D., please?

10 Okay. Let's get the jury back in.

11 MR. HEIM: Your Honor, I understand they'll
12 be marked for identification during the doctor's
13 testimony?

14 THE COURT: Yes. I've done that at this
15 point.

have

16 MR. ROSENBLATT: So I don't even really
17 to do that in front of the jury or --

18 THE COURT: Well, you can always present
19 this. Yes, you have to do it in front of the jury so
20 they know.

21 MR. HEIM: And at the time that they are
22 offered for admissibility, if they are --

23 THE COURT: That's a different story.

can

24 MR. HEIM: That's a different story. We
25 argue that then.

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1 THE COURT: Yes.

2 (The jurors entered the courtroom.)

3 (Plaintiffs' Exhibit 1896 was marked for
4 identification.)

5 (Plaintiffs' Exhibit 1894 was marked for
6 identification.)

7 THE COURT: Okay. Have a seat.

8 Sorry for the delay, folks, but it took a
9 little longer than we thought.

10 BY MR. ROSENBLATT:

11 Q. Doctor, I'd like to have marked for
12 identification a letter from David S. Pepples,
13 president of R.J. Reynolds, to your boss when you
14 Surgeon General of the United States, the Secretary
15 Health, Education and Welfare, Elliott Richardson,
16 dated October 23, 1972.

17 THE COURT: Give us the number on it.

18 MR. ROSENBLATT: Does it have a number?

19 THE COURT: Yes.

20 THE CLERK: Yes.

21 THE COURT: On the bottom.

22 MR. ROSENBLATT: Engle Plaintiffs' Exhibit
23 Number -- Engle Plaintiffs' Exhibit 1894.

24 THE COURT: For identification.

25 MR. ROSENBLATT: For identification.

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1 THE COURT: Okay.

2 BY MR. ROSENBLATT:

3 Q. And this -- you've got that letter in front
4 of you?

5 A. Yes.

6 Q. A copy of that letter?

7 This is a letter you saw back then?

8 A. Yes.

9 Q. And you prepared a response --

10 A. A draft response.

11 Q. A draft response for Secretary Richardson

to

12 respond to Mr. Pepples; is that correct?

13 A. That is correct.

14 Q. Now, the letter that Mr. Richardson

actually

15 sent to Mr. Pepples in response to the Pepples'

letter

16 of October 23, 1972, was not necessarily the draft

you

17 prepared, as you look at plaintiffs' --

18 A. It was -- categorically it was not.

19 MR. ROSENBLATT: Okay.

20 THE COURT: That number for the record is?

21 MR. ROSENBLATT: Plaintiffs' Exhibit Number

22 1896 for I.D.

23 THE COURT: Okay.

24 MR. ROSENBLATT: The Richardson response to

25 Pepples.

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1 THE COURT: Okay.

2 BY MR. ROSENBLATT:

3 Q. Dr. Steinfeld, did you, during your tenure

as

4 Surgeon General of the United States, make a public

number 5 declaration as to what you considered to be the
6 one health problem in America?
7 A. The number one public health problem, yes.
8 Q. And what was the number one public health
9 problem in America when you were Surgeon General?
10 A. In my opinion, it was smoking.
office 11 Q. Under what circumstances did you leave
12 as -- well, first of all, let me ask you this.
13 Under the terms of your appointment, as
14 Surgeon General of the United States, was that a
15 political appointment in the sense where the
president 16 can fire you any time he feels like firing you, or
did 17 you have a term appointment, and explain the
18 difference?
19 A. Well, I had a term appointment. Most of
20 the -- all of the political appointments read the
21 saying, certain beginning sentences, and then it
says, 22 appointed, let's say, as secretary of defense. And
23 then it reads: At the pleasure of the President and
24 for the time being, which means that on any given
day, 25 somebody can go to his office and find out he's no

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1 longer, or she, in the job.
2 A term appointment is just what it says; it

3 is a term appointment.

4 Q. When was your term up? Had you served,
5 completely served out your term?

6 A. No, I hadn't. It probably was in November
7 December of '73.

8 Q. Of 1973?

9 A. Yes.

10 Q. What were the circumstances under which you
11 resigned before the end of your term?

12 A. When the President was reelected, and I

13 he was up most of the night, he had called a meeting

14 his senior staff and cabinet members and asked for

15 of their resignations, and it went down a little

16 further. It went down to the level of the director

17 the NIH and it went down to the level of Surgeon

18 General.

19 And although I didn't have to resign, I did

20 send a letter of resignation. They did not like the

21 letter of resignation and requested it be changed. I

22 wrote a letter saying -- thanking him for the

23 opportunity to serve the country and being Surgeon

24 General, but I got it back and was told verbally that

25 it should read that, as is customary with reelection

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1 a President, I'm submitting my resignation. That is
2 what all of the cabinet officers were doing.

3 So I sent that in, and that was returned.

4 And they wanted another one with a reason, and I
5 didn't

6 have a reason, but I was willing to go, and I -- one
7 day they posted my resignation, on Saturday
8 afternoon.

9 Q. Which meant, in practical terms, that you
10 were gone; they accepted your resignation?

11 A. That's right. That's right.

12 Q. Okay. Now, just to put this in perspective
13 a
14 little in terms of the history, you talked about the
15 Presidential election. This was when Nixon was
16 running

17 for reelection.

18 A. That's correct.

19 Q. In 1972.

20 A. That's correct.

21 Q. In '68, he had defeated Hubert Humphrey and
22 now he was running against McGovern and now he was
23 running big time --

24 A. Correct.

25 Q. And it was after that, after his victory of
26 Senator McGovern, that your resignation was asked
27 for?

28 A. All of them, yes.

29 Q. Why didn't you say when your resignation
30 was

31 asked for, well, you know, I don't have to resign,
32 I've

14356

1 got a term appointment?

2 MR. MOSS: Objection, Your Honor, to
3 relevance.

4 THE COURT: Overruled.

5 A. It was -- I was uncertain who would be my
new
6 chief. We knew that Richardson was moving to
defense.
7 I knew that Weinberger was going to come to HEW and
8 that there would be other people in between, and I
was
9 ambivalent without knowing who was going to come, but
I
10 guess I did find out who it was, and my ambivalence
11 disappeared, and I was very happy to leave
Washington.

12 Q. Was your resignation voluntary?

13 A. Well, it was requested.

14 Q. Now, in The Frank Statement to Cigarette
15 Smokers, all of the tobacco companies, with the
16 exception of Liggett, signed on to this and --

17 MR. MARTINEZ: Objection, Your Honor.

18 MR. HEIM: Dosal, too.

19 MR. ROSENBLATT: Oh, I'm sorry. Dosal,
too.

20 This statement was made --

21 THE COURT: I didn't even recognize the
22 voice.

23 MR. MARTINEZ: I like it that way.

24 MR. ROSENBLATT: Hiding out.

25 BY MR. ROSENBLATT:

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1 Q. All right. Philip Morris, R.J. Reynolds,
2 Lorillard and Brown & Williamson signed this
document,
3 which says: We always have and always will cooperate
4 closely with those whose task it is to safeguard the
5 public health.

6 Obviously, as Surgeon General of the United
7 States, it was your task to safeguard the public
8 health; correct?

9 A. Yes.

10 Q. During your tenure, did they keep this
11 promise, did they cooperate with you?

12 A. Not really.

13 MR. ROSENBLATT: Thank you very much.

14 THE COURT: All right. I think we'll take
15 our lunch break before we get into cross.

16 It's ten after. All right. Let's make it
17 1:30.

18 Okay. We'll come back here at 1:30, folks.
19 And same instructions apply as to your lunch break.

20 Don't discuss the case. Don't reach any
21 conclusions. Enjoy your lunch and come back at 1:30.

22 (The jurors exited the courtroom.)

23 THE COURT: All right. You, of course, are
24 free to go anywhere you wish for lunch and be with
25 anybody you wish for lunch. But do not the discuss

the

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1 case, even with the lawyers, because you're still on
2 the witness stand.

3 Okay. Come back here at 1:30.

4 Mr. Rosenblatt, if you get a report, let me
5 know.

6 MR. ROSENBLATT: I sure will.

7 THE COURT: And, Mr. Moss, did you get that
8 document you were looking for?

9 MR. MOSS: We're shortening it.

10 MR. HEIM: We are abbreviating right now.

11 MR. MOSS: I didn't remember it as long.

12 THE COURT: My comments?

13 MR. MOSS: Pardon me?

14 THE COURT: Editing my comments?

15 MR. HEIM: No, Your Honor. We're editing
16 your proposed comments.

17 THE COURT: The ones you prepared?

18 MR. HEIM: Yes, sir.

19 MR. MOSS: Yes, sir.

20 THE COURT: Okay.

21 (A lunch recess was taken at 12:10 p.m.)

22

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